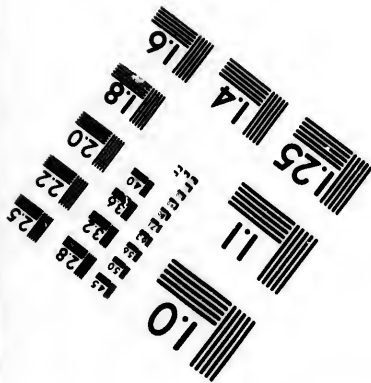
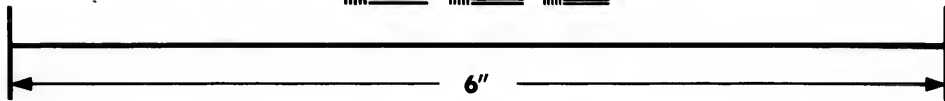
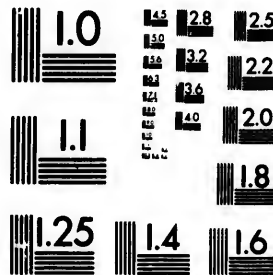


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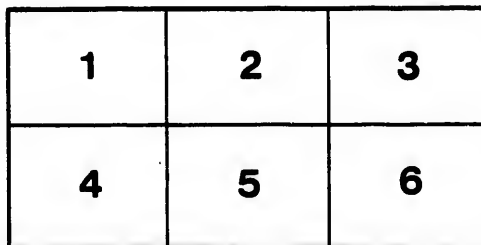
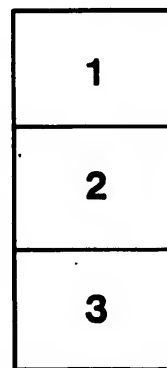
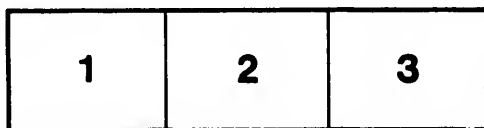
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MAINE AND NEW BRUNSWICK.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

UPON

*The subject of the present state of affairs between the State of Maine
and the British Province of New Brunswick.*

FEBRUARY 26, 1839.

Referred to the Committee on Foreign Affairs, and 10,000 extra copies ordered to be printed.

To the House of Representatives :

I lay before Congress several despatches from his excellency the Governor of Maine, with enclosures, communicating certain proceedings of the Legislature of that State, and a copy of the reply of the Secretary of State, made by my direction, together with a note from H. S. Fox, Esq., envoy extraordinary and minister plenipotentiary of Great Britain, with the answer of the Secretary of State to the same.

It will appear from these documents, that a numerous band of lawless and desperate men, chiefly from the adjoining British provinces, but without the authority or sanction of the Provincial Government, had trespassed upon that portion of the territory in dispute between the United States and Great Britain which is watered by the river Aroostook, and claimed to belong to the State of Maine; and that they had committed extensive depredations there, by cutting and destroying a very large quantity of timber. It will further appear that the Governor of Maine, having been officially apprized of the circumstance, had communicated it to the Legislature, with a recommendation of such provisions, in addition to those already existing by law, as would enable him to arrest the course of said depredations, disperse the trespassers, and secure the timber which they were about carrying away; that, in compliance with a resolve of the Legislature, passed in pursuance of his recommendation, his excellency had despatched the land agent of the State, with a force deemed adequate to that purpose, to the scene of the alleged depredations, who, after accomplishing a part of his duty, was seized by a band of the trespassers, at a house claimed to be within the jurisdiction of Maine, whither he had repaired for the purpose of meeting and consulting with the land agent of the province of New Brunswick, and conveyed as a prisoner to Frederickton, in that province, together with two other citizens of the State, who were assisting him in the discharge of his duty.

It will also appear that the Governor and Legislature of Maine, satisfied that the trespassers had acted in defiance of the laws of both countries, learning that they were in possession of arms, and anticipating (correctly,

Thomas Allen, print.

as the result has proved) that persons of their reckless and desperate character would set at naught the authority of the magistrates, without the aid of a strong force, had authorized the sheriff and the officer appointed in the place of the land agent to employ, at the expense of the State, an armed posse, who had proceeded to the scene of these depredations, with a view to the entire dispersion or arrest of the trespassers, and the protection of the public property.

In the correspondence between the Governor of Maine and Sir John Harvey, Lieutenant Governor of the province of New Brunswick, which has grown out of these occurrences, and is likewise herewith communicated, the former is requested to recall the armed party advanced into the disputed territory for the arrest of trespassers, and is informed that a strong body of British troops is to be held in readiness to support and protect the authority and subjects of Great Britain in said territory. In answer to that request the Provincial Governor is informed of the determination of the State of Maine to support the land agent and his party in the performance of their duty; and the same determination, for the execution of which provision is made by a resolve of the State Legislature, is communicated by the Governor to the General Government.

The Lieutenant Governor of New Brunswick, in calling upon the Governor of Maine for the recall of the land agent and his party from the disputed territory, and the British minister in making a similar demand upon the Government of the United States, proceed upon the assumption that an agreement exists between the two nations, conceding to Great Britain, until the final settlement of the boundary question, exclusive possession of, and jurisdiction over, the territory in dispute. The important bearing which such an agreement, if it existed, would have upon the condition and interests of the parties, and the influence it might have upon the adjustment of the dispute, are too obvious to allow the error upon which this assumption seems to rest, to pass for a moment without correction. The answer of the Secretary of State to Mr. Fox's note, will show the ground taken by the Government of the United States upon this point. It is believed that all the correspondence which has passed between the two Governments upon this subject has already been communicated to Congress, and is now on their files. An abstract of it, however, hastily prepared, accompanies this communication. It is possible that in thus abridging a voluminous correspondence, commencing in 1825, and continuing to a very recent period, a portion may have been accidentally overlooked; but it is believed that nothing has taken place which would materially change the aspect of the question as therein presented. Instead of sustaining the assumption of the British functionaries, that correspondence disproves the existence of any such agreement. It shows that the two Governments have differed not only in regard to the main question of title to the territory in dispute, but with reference also to the right of jurisdiction, and the fact of the actual exercise of it in different portions thereof. Always aiming at an amicable adjustment of the dispute, both parties have entertained, and repeatedly urged upon each other, a desire that each should exercise its rights, whatever it considered them to be, in such a manner as to avoid collision, and allay, to the greatest practicable extent, the excitement likely to grow out of the controversy. It was in pursuance of such an understanding that Maine and Massachusetts, upon the remonstrance of Great Britain, desisted from making sales of lands; and the General Government, from the construction of a projected military road in a por-

tion of the territory of which they claimed to have enjoyed the exclusive possession; and that Great Britain, on her part, in deference to a similar remonstrance from the United States, suspended the issue of licenses to cut timber in the territory in controversy, and also the survey and location of a railroad through a section of country over which she also claimed to have exercised exclusive jurisdiction.

The State of Maine had a right to arrest the depredations complained of; it belonged to her to judge of the exigency of the occasion calling for her interference; and it is presumed, that had the Lieutenant Governor of New Brunswick been correctly advised of the nature of the proceedings of the State of Maine, he would not have regarded the transaction as requiring, on his part, any resort to force. Each party claiming a right to the territory, and hence to the exclusive jurisdiction over it, it is manifest that, to prevent the destruction of timber by trespassers, acting against the authority of both, and at the same time avoid forcible collision between the contiguous Governments during the pendency of negotiations concerning the title, resort must be had to the mutual exercise of jurisdiction in such extreme cases, or to an amicable and temporary arrangement as to the limits within which it should be exercised by each party. The understanding supposed to exist between the United States and Great Britain has been found heretofore sufficient for that purpose, and I believe will prove so hereafter, if the parties on the frontier, directly interested in the question, are respectively governed by a just spirit of conciliation and forbearance. If it shall be found, as there is now reason to apprehend, that there is, in the modes of construing that understanding by the two Governments, a difference not to be reconciled, I shall not hesitate to propose to her Britannic Majesty's Government a distinct arrangement for the temporary and mutual exercise of jurisdiction, by means of which similar difficulties may in future be prevented.

But, between an effort on the part of Maine to preserve the property in dispute from destruction by intruders; and a military occupation by that State of the territory, with a view to hold it by force, while the settlement is a subject of negotiation between the two Governments, there is an essential difference, as well in respect to the position of the State as to the duties of the General Government. In a letter addressed by the Secretary of State to the Governor of Maine, on the 1st of March last, giving a detailed statement of the steps which had been taken by the Federal Government to bring the controversy to a termination, and designed to apprise the Governor of that State of the views of the Federal Executive in respect to the future, it was stated, that while the obligations of the Federal Government to do all in its power to effect the settlement of the boundary question were fully recognised, it had, in the event of being unable to do so specifically, by mutual consent, no other means to accomplish that object amicably than by another arbitration, or by a commission with an umpire in the nature of an arbitration; and that, in the event of all other measures failing, the President would feel it his duty to submit another proposition to the Government of Great Britain to refer the decision of the question to a third Power. These are still my views upon the subject; and, until this step shall have been taken, I cannot think it proper to invoke the attention of Congress to other than amicable means for the settlement of the controversy, or to cause the military power of the Federal Government to be brought in aid of the State of Maine, in any attempt to effect the object by a resort to force.

On the other hand, if the authorities of New Brunswick should attempt to enforce the claim of exclusive jurisdiction set up by them, by means of a military occupation on their part, of the disputed territory, I shall feel myself bound to consider the contingency provided by the constitution as having occurred; on the happening of which, a State has the right to call for the aid of the Federal Government to repel invasion.

I have expressed to the British minister near this Government a confident expectation that the agents of the State of Maine, who have been arrested under an obvious misapprehension of the object of their mission, will be promptly released; and to the Governor of Maine, that a similar course will be pursued in regard to the agent of the province of New Brunswick. I have also recommended that any militia that may have been brought together by the State of Maine, from an apprehension of a collision with the Government or people of the British province, will be voluntarily and peaceably disbanded.

I cannot allow myself to doubt that the results anticipated from these representations will be seasonably realized. The parties more immediately interested cannot but perceive that an appeal to arms, under existing circumstances, will not only prove fatal to their present interests, but would postpone, if not defeat, the attainment of the main objects which they have in view. The very incidents which have recently occurred will necessarily awaken the Governments to the importance of promptly adjusting a dispute, by which it is now made manifest that the peace of the two nations is daily and imminently endangered. This expectation is further warranted by the general forbearance which has hitherto characterized the conduct of the Governments and people on both sides of the line. In the uniform patriotism of Maine, her attachment to the Union, her respect for the wishes of the people of her sister States, (of whose interest in her welfare she cannot be unconscious,) and in the solicitude felt by the country at large for the preservation of peace with our neighbors, we have a strong guaranty that she will not disregard the request that has been made of her.

As, however, the session of Congress is about to terminate, and the agency of the Executive may become necessary during the recess, it is important that the attention of the Legislature should be drawn to the consideration of such measures as may be calculated to obviate the necessity of a call for an extra session. With that view, I have thought it my duty to lay the whole matter before you, and to invite such action thereon as you may think the occasion requires.

M. VAN BUREN.

WASHINGTON, *February 26, 1839.*

List of Papers accompanying the President's Message of February 26, 1839.

- Governor of Maine to the President, (with enclosures,) February 18, 1839.
- Same to same, (with enclosures,) February 19, 1839.
- Secretary of State to the Governor of Maine, February 26, 1839.
- Mr. Fox to Mr. Forsyth, February 23, 1839.
- Mr. Forsyth to Mr. Fox, February 25, 1839.
- Mr. Fox to Mr. Forsyth, February 25, 1839.

[NOTE—The last note was received after the President's message was prepared.]
Extracts from printed correspondence.

Governor of Maine to the President.

EXECUTIVE DEPARTMENT,

Augusta, February 18, 1839.

SIR: I have the honor herewith to enclose the Governor's message to the Legislature of this State on the 24th ultimo; resolve of the Legislature thereon; message of the 13th instant, and resolve of the same date; message of the 18th instant, and resolves passed by the House of Representatives of the same date; a proclamation issued by Sir John Harvey, Lieutenant Governor of New Brunswick, on the 13th instant; and a letter received by express from him this morning, also dated February 13.

By these papers you will learn that the honorable Rufus McIntire, while engaged in the service of this State, as land agent, in endeavoring to expel, from lands bordering on the Aroostook river in this State, a body of armed men, principally from the British provinces, who were engaged in cutting the timber, in defiance of the authorities of this State, has been seized, with Gustavus G. Cushman and Thomas Bartlett, Esquires, who were aiding the land agent in this service, and have been transported to Fredericton, the capital of New Brunswick. The manner in which this was, done I have described in my message to the Legislature of this day. It was, to say the least of it, grossly insulting to Mr. McIntire, and is such an indignity to the State and the nation as cannot and ought not to be submitted to. These gentlemen have been seized upon territory which is regarded by Maine as having always been within her exclusive possession and jurisdiction, as will appear by a few of the facts alluded to in my message.

You will perceive, by the proclamation and letter of Sir John Harvey, that he assumes the extraordinary position that the British Government, by an agreement with the Government of the United States, is entitled to the exclusive possession and jurisdiction of the whole disputed territory until the question of right shall be settled; and that he has ordered out a large military force to expel the party in the service of the land agent from the territory, calling the proceeding on our part an invasion of her Majesty's province of New Brunswick. In this state of things, I have to inform your excellency, that our citizens, now upon this territory, engaged in the service of the State, will not leave it without accomplishing their object, unless compelled to do so by a superior force; that one thousand draughted militia will march for the Aroostook on Wednesday, the 21st instant, to aid and assist the land agent in carrying into effect the resolve of the 24th of January. I shall, also, forthwith proceed to order a further draught of the militia of at least ten thousand men, who will hold themselves in instant readiness to march. Such further measures as it may be found necessary to take, to maintain the rights of this State in the premises, I assure your excellency that I shall not fail to take, and that with as much promptness as circumstances will permit.

These, in brief, (in conjunction with the statements in the papers enclosed,) are the facts in the case; and, if I do not misconceive them, they authorize me to call upon the General Government, which I do, for that aid and assistance which the whole States have guaranteed to each in such an emergency.

In a case of such deep and vital interest to this State, I feel confident that you will not only rightly appreciate the common feeling of our

citizens, but that you will act with that promptness and efficiency which our peculiar position demands.

I have not time to enter more at large into the circumstances of the case. John D. McCrate, Esq., the bearer of these despatches, will communicate such further information as your excellency may be desirous of obtaining.

I will only add, that, in this State, there is but one feeling upon this subject; and that is, of deep indignation at the outrages that have been perpetrated, and of a fixed and unyielding determination not to submit to the degrading terms proposed by the Lieutenant Governor of New Brunswick—that of withdrawing from the Aroostook territory, and abandoning our soil to foreigners, and our property to a band of armed plunderers.

I have the honor to be, with high respect, your most obedient servant,
JOHN FAIRFIELD, *Gov. of Maine.*

His Excellency MARTIN VAN BUREN,
President of the United States.

To the Senate and House of Representatives:

On the 14th of December, 1838, the land agents of Massachusetts and of this State appointed George W. Buckmore to proceed to the Aroostook and Fish rivers, for the purpose of preventing, as far as he was able, any trespassing upon the public land. Mr. Buckmore has just returned from those places, and made a report, which has been communicated to the Governor and Council, and is, herewith, laid before you for your consideration.

By this report, it appears that a large number of men, (many of them, I am informed, from the British provinces,) are trespassing very extensively upon the lands belonging to this State; that they not only refuse to desist, but defy the power of this Government to prevent their cutting timber to any extent they please. Upon the Grand river, it is estimated there are from forty to fifty men at work. On Green river, from twenty to thirty. On Fish river, from fifty to seventy-five men, with sixteen yoke of oxen and ten pair of horses, and more daily expected to go in. On township letter H, ten men, with six oxen and one pair of horses. On the Little Madawaska, seventy-five men, with twenty yoke of oxen and ten horses. At the Aroostook falls, fifteen men, with six yoke of oxen. The quantity of timber which these trespassers will cut the present winter is estimated in value by the land agent at \$100,000.

These facts, it seems to me, present a case in which not merely the property, but the character of the State, is clearly involved. The supremacy of law, as well as the sanctity of right, cannot thus be contemned and set at naught with impunity, without impairing the general authority of the Government, and inviting renewed aggressions on the part of daring and lawless men.

Conduct so outrageous and high-handed as that exhibited by these reckless depredators upon the public property, calls for the most prompt and vigorous action of this Government.

Under these circumstances, therefore, I would recommend that the land agent be instructed forthwith to proceed to the place of operation on the Aroostook, and also upon Fish river, if practicable, with a sufficient num-

ber of men suitably equipped, to seize the teams and provisions, break up the camps, and disperse those who are engaged in this work of devastation and pillage. The number suggested by the land agent as sufficient for this purpose is fifty. This estimate is probably too small.

The land agent, under the law of 1831, may perhaps be invested with sufficient authority for this purpose. But, considering that it would be an extraordinary measure, and would involve considerable expense, for which there should be an appropriation, it was deemed best to ask the sanction of the Legislature.

It is not to be supposed that the Provincial Government wink at these lawless proceedings on the part of its citizens. On the contrary, we are bound to believe that it would be as willing as this Government to have them arrested. Be it as it may, we are bound by every consideration of duty to ourselves and to those who have confided their interests to our care, to take some strong, decisive, and efficient measures in a case of so flagrant a character. Nothing else will save our beautiful and valuable forests from destruction and plunder.

I have deemed it expedient to make this communication to you confidentially, under the impression that if your proceedings should be communicated to the trespassers before the land agent was prepared to go in, they would combine their forces, and render any attempt to break them up more difficult, if not more dangerous.

JOHN FAIRFIELD.

COUNCIL CHAMBER, *January 23, 1839.*

STATE OF MAINE.

Resolve relating to trespassers upon the public lands.

Resolved, That the land agent be, and is hereby, authorized and required to employ forthwith sufficient force to arrest, detain, and imprison all persons found trespassing on the territory of this State, as bounded and established by the treaty of 1783; and that the land agent be, and is hereby, empowered to dispose of all the teams, lumber, and other materials in the hands and possession of the trespassers, in such way and manner as he may deem necessary and expedient at the time, by destroying the same or otherwise; and that the sum of ten thousand dollars be, and hereby is, appropriated for the purpose of carrying this resolve into effect; and that the Governor, with the advice of the Council, be, and is hereby, authorized to draw his warrant, from time to time, for such sums as may be required for the purpose aforesaid.

IN THE HOUSE OF REPRESENTATIVES,

January 23, 1839.

This resolve having had two several readings, and the engrossing of the same dispensed with, finally passed. Sent up for concurrence.

H. HAMLIN, *Speaker.*

IN SENATE, *January 23, 1839.*

This resolve having had two several readings, and the engrossing of the same dispensed with, was finally passed in concurrence.

JOB PRINCE, *President.*

January 24, 1839. Approved:

JOHN FAIRFIELD.

STATE OF MAINE.

SECRETARY'S OFFICE,

Augusta, February 18, 1839.

I hereby certify that the foregoing is a true copy of the original deposited in this office.

Attest: A. R. NICHOLS,
 Secretary of State.

To the House of Representatives :

In compliance with the request of the House of Representatives, I herewith communicate such information as I have in relation to the "reported abduction of the land agent."

Under the resolve of the 24th of January last, entitled "a resolve relating to trespassers upon the public lands," the land agent repaired, with about two hundred chosen men, to the scene of operations, on the Aroostook river. Prior to his reaching there, it is understood that the trespassers, amounting to about three hundred in number, all well armed, had combined and were determined to resist every effort that should be made to break them up. Finding, however, that the land agent had prepared himself with a brass six-pounder, they chose to retire from the ground, passing down the river.

The land agent, with his company, also passed down the Aroostook to near its mouth, finding the several places of operation abandoned by the trespassers. On Monday last they captured a gang of about twenty, who had been operating farther up the river, and sent several, who were considered the ringleaders, to Bangor, where it is supposed they are now in jail.

On Monday the land agent sent a letter to Mr. Maclauchlan, the land agent for the province of New Brunswick, inviting a meeting with him at the house of a Mr. Fitzherbert, about four miles from where our company were then stationed; and on the same evening, in company with four others, Mr. McIntire repaired to the house of Mr. Fitzherbert, intending to pass the night there. The trespassers, however, having in some way become possessed of the facts, detached a company of about fifty, seized the agent and those accompanying him, and transported them, it is believed, beyond the bounds of the State.

The company is now at No. 10 on the Aroostook, fortified, and anticipating an attack, in case any attempt should be made on our part to execute the resolve of the 24th of January, by destroying the timber which has already been cut.

I have advised the sending in a reinforcement of three hundred men, as it is probable that the number of the trespassers will be constantly augmenting; and, if a resolve to that effect be passed, shall appoint an agent to supply, temporarily, the place of Mr. McIntire, and lead on the expedition.

I have also despatched a special messenger to Sir John Harvey, Lieutenant Governor of New Brunswick, for the purpose, among other things, of ascertaining whether these high-handed proceedings of the trespassers are authorized, or in any way countenanced by the Provincial Government;

and to procure the release of the agent and those taken with him. The agent was also charged with other matters pertaining to this most extraordinary and outrageous proceeding.

The facts above related, except in relation to my own doings, have been communicated to me verbally by the sheriff of Penobscot, who formed one of the company of the land agent.

This is the only communication from the land agent or his company which I have had, verbally or otherwise, that could be relied upon.

JOHN FAIRFIELD.

COUNCIL CHAMBER, *February 15, 1839.*

STATE OF MAINE.

Resolve in relation to the Northeastern boundary.

Resolved, That the Governor be authorized to appoint, when circumstances in his opinion require it, some person or persons to supply, temporarily, the place of the land agent, in executing the resolve of the 24th January last, relating to trespassers on the public lands. And the person or persons thus appointed shall, for the time being, have all the power, and be subject to all the duties of the land agent, so far as it regards the resolve aforesaid.

In the House of Representatives, February 16, 1839. Read and passed.

H. HAMLIN, *Speaker.*

In Senate, February 16, 1839. Read and passed.

JOHN PRINCE, *President.*

February 16, 1839. Approved :

JOHN FAIRFIELD.

STATE OF MAINE, SECRETARY'S OFFICE,

Augusta, February 18, 1839.

I hereby certify that the foregoing is a true copy of the original on file in this office.

Attest : A. R. NICHOLS, *Secretary of State.*

To the Senate and House of Representatives :

Since my last communication to you upon the subject of the trespasses upon the public lands, there has been forwarded to me a proclamation purporting to have been issued by the Lieutenant Governor of the province of New Brunswick, which I deem it my duty to communicate to you, with a statement of my proceedings consequent thereon.

By this proclamation, it seems that while the Lieutenant Governor disavows any authority from his Government for the seizure of the land agent, he yet speaks of the attempt of the civil authorities of this State to drive a band of armed trespassers off our public lands as "an outrage" and an invasion of the territory of the province of New Brunswick; and avows the fact of having ordered "a sufficient military force" to repair to the place where the land agent's party are endeavoring to execute your resolve of the 24th of January, and to repel what he thus regards as an invasion of the province of New Brunswick.

Immediately upon the receipt of this extraordinary document, I took measures to hasten the departure of the land agent's party, understood to have been assembled at Bangor, awaiting orders, and numbering between four and five hundred men; and also issued an order to Major General Isaac Hodsdon, of the third division, to detach one thousand men, by draught or otherwise, properly officered and equipped, who were to rendezvous at Bangor, and then proceed, at the earliest possible moment, to the place occupied by the land agent's party, on or near the Aroostook river, there to render such aid as would enable the land agent to carry into effect the resolve of the 24th of January.

I also despatched a special messenger with a communication to Major Kirby, of United States artillery, commanding at Hancock barracks, Houlton, informing him of the facts, and asking his co-operation with the troops under his command with the forces of this State in repelling an invasion of our territory, and sustaining our citizens in the lawful and authorized protection they are endeavoring to extend over a portion of the property of the State.

If these proceedings on my part meet the approbation of the Legislature, and an appropriation be made for the purpose, I shall feel it to be my duty to proceed forthwith to order a draught from the militia of at least ten thousand men, who will hold themselves in instant readiness to march to the frontier should circumstances require it.

I have not yet called upon the President of the United States for aid in repelling the invasion of our territory by foreign troops, deeming it proper to postpone that step until the return of Colonel Rogers from his special mission to Frederickton, or at least until some information should be received from him, which will, probably, be as early as the 20th or 21st instant. If, however, you should think otherwise, and that no delay should be allowed for this purpose, an intimation to that effect will be promptly obeyed.

If I have not entirely misconceived the circumstances of the case presented for your consideration, it is one calculated to excite the deepest feeling in the breasts of our citizens, and calls for the most prompt and determined action on the part of this Government. What is that case? You were informed that a large number of armed and desperate men from a neighboring province had forced themselves into the territory of this State, with a fixed purpose of cutting a vast amount of timber, and of resisting, even unto blood, any attempts to arrest them in the prosecution of their unhallowed object. Deeming it your duty to make an effort to protect the interests of those who had confided them to your care, you instructed the land agent to proceed to the scene of devastation and plunder with a sufficient force to arrest those who were engaged in it, and to break up their daring and wicked enterprise. While in the act of executing this order, the land agent was seized, transported beyond the bounds of the State, and finally carried *upon a sled*, like a felon, and under the guard of provincial troops, to the capital of New Brunswick, for trial. Could a greater indignity be offered to any people having a particle of sensibility to its rights and its honor, or to the sacredness of the personal liberty of its citizens? It is true that the Lieutenant Governor denies that the original seizure was by authority. But at Woodstock the *magistrates* took cognizance of the affair; sanctioned the proceedings by issuing a warrant, (acting, undoubtedly, under the authority of

the proclamation,) and sending our citizens under an ignominious escort to Frederickton. Really, if there be any apology or justification for this treatment of our citizens, it is not to be found in any code of international honor or comity with which I have been acquainted.

Not only this, but it seems that a military force is sent into a part of the territory of this State, to expel from it a civil force sent there by this Government for the protection of its property. How long are we thus to be trampled upon; our rights and claims derided; our power contemned; and the State degraded? If there ever was a time when the spirit of independence and self-respect should assert itself, that time is the present. We cannot tamely submit to be driven from our territory while engaged in the civil employment of looking after and protecting our property, without incurring a large measure of ignominy and disgrace.

No palliating circumstance for this outrage can be found in even a pretence that the place where it was committed is within the concurrent jurisdiction of the two Governments, much less that the British Government have had exclusive jurisdiction. Lands even higher up, and beyond this, were surveyed and granted by the State of Massachusetts more than thirty years ago; and Massachusetts and Maine have long been in the habit of granting permits to cut timber upon these Aroostook lands, without being, to my knowledge, molested from any quarter, to say nothing of the sales and actual occupation of the land itself.

It must be gratifying to all who have a true sense of the honor and interests of the State to perceive that, upon this subject, the din of party warfare is hushed, and that a unanimity has prevailed alike honorable and patriotic. No interruption to this commendable spirit, I trust, will be suffered. Union and good feeling, no less than prudence and energy, are absolutely necessary in this extraordinary emergency.

JOHN FAIRFIELD.

COUNCIL CHAMBER, *February 18, 1839.*

Since writing the foregoing, I have received a communication from the Lieutenant Governor of the province of New Brunswick, in which he sets up an alleged agreement that the British Government shall have exclusive jurisdiction and possession of the disputed territory until the question be settled; and informs us that he is instructed not to suffer any interference with that possession and jurisdiction. He entreats us to withdraw the land agent's party, and adds, that he has directed a strong force of "her Majesty's troops to be in readiness to support her Majesty's authority, and protect her Majesty's subjects in the disputed territory, in the event of this request not being immediately complied with."

In regard to all this, I have only to say that, for one, I see no reason to doubt the entire correctness of the course we have thus far pursued, and that, with the blessing of God, I trust we shall persevere.

No such agreement as that alluded to by the Lieutenant Governor can be recognised by us; and it is an entire misapprehension, to say the least of it, that such an agreement has ever been made.

The letter having been written before Mr. McIntire reached Frederickton, no official communication is made as to the course intended to be pursued in regard to him and those arrested with him. I learn, however, indirectly, that they are to be retained.

I am informed that the land agent's party have stationed themselves, for the present, at the termination of the Aroostook road. While there,

Mr. Maclauchlan, the provincial land agent, presented himself, and, in the name of her Majesty, warned the party to disperse. Mr. Maclauchlan and his two assistants were, thereupon, taken into custody; and the agent, with one assistant, immediately sent to Bangor, where they are now detained.

Copies of the proclamation and letter of the Lieutenant Governor of New Brunswick are herewith communicated.

JOHN FAIRFIELD.

STATE OF MAINE.

An additional resolve relating to trespassers upon the public lands.

Resolved, That the Governor be requested forthwith to communicate to the President of the United States the measures recently adopted by the State of Maine in relation to the trespasses on the public lands of this State, and also copies of the correspondence between the Governor of New Brunswick and the Executive of Maine, in relation to those measures, together with any information in his possession relative to the subject; and to request the aid of the General Government in support of the rights of the State of Maine.

HOUSE OF REPRESENTATIVES,

February 18, 1839.

This resolve having had two several readings, passed to be engrossed. Sent up for concurrence.

CHARLES WATERHOUSE, *Clerk.*

STATE OF MAINE.

Resolve for the protection of public lands.

Resolved, That the honor and interest of this State demand that a sufficient military force be forthwith stationed on the Aroostook river, west of the boundary-line of the State, as established by the treaty of 1783; and on the river St. John, if found practicable, at such points as may be best adapted to the object, to prevent further depredations on the public lands, and to protect and preserve the timber, and other lumber already cut there by trespassers, and to prevent its removal without the limits of the State.

Resolved, That the sum of eight hundred thousand dollars be, and hereby is, appropriated for the purpose of enabling the Executive to carry out the purposes of the foregoing resolve, and the resolve passed January 24, 1839; and that the Governor be, and hereby is, authorized, with the advice of Council, to draw his warrant for the same, from time to time, as it may be needed for that purpose.

HOUSE OF REPRESENTATIVES,

February 18, 1839.

I hereby certify that the foregoing resolves this day passed to be engrossed by an unanimous vote; one hundred and fifty members having voted thereon.

CHARLES WATERHOUSE, *Clerk.*

By his excellency Major General Sir JOHN HARVEY, K. C. B. and K. C. H.,
Lieutenant Governor and Commander-in-chief of the province of New
Brunswick, &c.

A PROCLAMATION.

Whereas I have received information that a party of armed persons, to the number of two hundred or more, have invaded a portion of this province, under the jurisdiction of her Majesty's Government, from the neighboring State of Maine, for the professed object of exercising authority, and driving off persons stated to be cutting timber therein; and that divers other persons have, without any legal authority, taken up arms with the intention of resisting such invasion and outrage, and have broken open certain stores in Woodstock, in which arms and ammunition belonging to her Majesty were deposited, and have taken the same away for that purpose, I do hereby charge and command all persons concerned in such illegal acts forthwith to return the arms and ammunition so illegally taken, to their place of deposit; as the Government of the province will take care to adopt all necessary measures for resisting any hostile invasion or outrage that may be attempted upon any part of her Majesty's territories or subjects.

And I do hereby charge and command all magistrates, sheriffs, and other officers to be vigilant, aiding and assisting in the apprehension of all persons so offending, and to bring them to justice. And, in order to aid and assist the civil power in that respect, if necessary, I have ordered sufficient military force to proceed forthwith to the place where these outrages are represented to have been committed, as well to repel foreign invasion, as to prevent the illegal assumption of arms by her Majesty's subjects in this province.

And further, in order to be prepared, if necessary, to call in the aid of the constitutional militia force of the country, I do hereby charge and command the officers commanding the first and second battalions of the militia of the county of Carleton, forthwith to proceed, as the law directs, to the draughting of a body of men, to consist of one-fourth of the strength of each of those battalions, to be in readiness for actual service, should occasion require.

Given under my hand and seal at Frederickton, the thirteenth day of February, in the year of our Lord one thousand eight hundred and thirty-nine, and in the second year of her Majesty's reign.

By his excellency's command :

WILLIAM F. ODELL.

God save the Queen.

GOVERNMENT HOUSE,

Frederickton, (New Brunswick,) February 13, 1839.

SIR: I have just heard, with the utmost surprise and regret, that, without the *courtesy* of any previous intimation whatever to this Government, an armed force from the State of Maine has entered the territory, the claim to which is in dispute betwixt Great Britain and the United States, and which it has been agreed betwixt the two General Governments shall remain in the exclusive possession and jurisdiction of England until that claim be determined.

It has been my duty, on more than one occasion, to apprise the Executive Government of Maine that my instructions do not permit me to suf-

fer any interference with that possession and jurisdiction, until the question of right shall have been finally decided in discussion betwixt the two General Governments.

With the knowledge of these instructions thus explicitly made known, I cannot but repeat the expression of the deep regret which I feel, that, instead of seeking their recall or modification through the Presidential Government, the State of Maine should thus have forced upon a subordinate officer the alternative of either failing in his duty, by abstaining from the fulfilment of the commands of his sovereign, or, by acting up to them, placing the two countries in a state of border collision, if not the two nations in immediate and active hostility.

Such, nevertheless, is the position in which I find myself placed by this overt act on the part of the State of Maine; one from which I do not hesitate in entreating your excellency to relieve me, by ordering the immediate recall of a force whose presence within the precincts of the territory as claimed by England is contrary to my instructions to permit. And it is proper that I should acquaint your excellency that I have directed a strong force of her Majesty's troops to be in readiness to support her Majesty's authority, and to protect her Majesty's subjects in the disputed territory, in the event of this request not being immediately complied with.

With regard to any plea for these proceedings on the part of the State of Maine, connected with timber spoliations in that territory, I have to inform your excellency that I have given directions for a boom to be placed across the mouth of the Aroostook, where the seizing officer, protected by a sufficient guard, will be able to prevent the passage of any timber into the St. John in the spring, or to seize it and expose it to public sale, for the benefit of the "disputed territory fund."

Similar precautions will be adopted in regard to any timber cut upon the Upper St. John, or the tributary streams falling into it.

Anxiously awaiting your excellency's reply to this communication, I have the honor to be your excellency's most obedient, humble servant,

J. HARVEY.

His Excellency JOHN FAIRFIELD,
Governor of the State of Maine.

Governor of Maine to the President.

EXECUTIVE DEPARTMENT,

Augusta, February 19, 1839.

SIR: Yesterday I had the honor to enclose you certain papers relating to the difficulties which have arisen upon our Northeastern frontier, with a brief statement of the facts.

I have now the honor to enclose you my reply to the letter of the Lieutenant Governor of New Brunswick, under date of the 13th instant, and resolves passed by both branches of our Legislature.

I would further inform your excellency that, by a communication just received from Major Kirby, of the United States artillery, commanding at Hancock barracks, Houlton, I learn that "the 36th regiment, from a West India station, has arrived in the province;" that, "on the 16th instant, one company of that regiment passed Woodstock, destined to the mouth of the Aroostook;" that, "this morning (the 18th) another company followed;

the whole under the command of Colonel Maxwell," &c. He adds, as a rumor, that "one of the regiments which recently passed through to Canada is ordered back, and that two more regiments are daily expected from the West Indies."

The honorable Rufus McIntire is still detained by the provincial authorities at Fredericton.

Under these circumstances, I cannot but entertain the belief that as many regiments of United States troops as can possibly be spared from other service will be ordered forthwith to our frontier, and that Major Kirby will also receive orders to co-operate with the forces of this State in repelling an invasion of our territory.

Without time to add more, I subscribe myself, with assurances of high respect, your excellency's obedient servant,

JOHN FAIRFIELD,

Governor of Maine.

His Excellency M. VAN BUREN,

President of the United States.

EXECUTIVE DEPARTMENT,

Augusta, February 19, 1839.

SIR: I have the honor to acknowledge the receipt of your excellency's letter of the 13th instant, by express; and avail myself of the return of your messenger, R. English, Esq., to make a reply.

You say, "I have just heard, with the utmost surprise and regret, that, without the *courtesy* of any previous intimation whatever to this Government, an armed force from the State of Maine has entered the territory, the claim to which is in dispute," &c.

In reply, I cannot but regret that your excellency should have thought the use of such language suitable to be employed upon this occasion. If I am amenable to a charge want of "*courtesy*" in any thing I have heretofore done, I will endeavor to manifest enough of that accomplishment in this reply, not to bandy epithets with one of whom I had formed so high an opinion as of your excellency; and will only say further, that, while I have the honor to hold the place I now occupy, I trust, that a sense of duty to my State and her interests will always predominate over a mere blind regard to the artificial rules of etiquette. I think, however, that your excellency would not have used that term, if you had considered for a moment that the proceedings of our land agent were in execution of a resolve of the Legislature of this State, adopted in *secret session*; and that no notice of these proceedings could have been given, without an unqualified breach of faith and duty.

In speaking of the disputed territory, your excellency says: "the claim to which is in dispute betwixt Great Britain and the United States, and which, it has been agreed betwixt the two General Governments, shall remain in the exclusive possession and jurisdiction of England until that claim shall be determined."

Now, sir, I cannot hesitate to say that, in my opinion, your excellency is laboring under an entire misapprehension in regard to the facts. No such agreement, I am persuaded, has ever been made between the two Governments. I have looked in vain for it among the numerous documents which have grown out of this question, and have never heard of any recognition of it, verbal or otherwise, on the part of the officers of the Gen-

eral Government. If, however, such an agreement exists, your excellency can undoubtedly point it out. At all events, such an agreement can never be recognised by this State. A decent self-respect will ever forbid it, if there were no other considerations in the way.

Your excellency entreats me immediately to recall the force now upon the territory; and then adds, "It is proper that I should acquaint your excellency that I have directed a strong force of her Majesty's troops to be in readiness to support her Majesty's authority, and to protect her Majesty's subjects in the disputed territory, in the event of this request not being immediately complied with."

In reply, I have to say that the territory bordering upon the Aroostook river has always been, as I regard the facts, in the possession and under the jurisdiction of Massachusetts and Maine; that more than thirty years ago, Massachusetts surveyed and granted large tracts of it, which have ever since been, in some way, possessed by the grantees, and those claiming under them; that the rest of it was surveyed by, and some of it divided between Massachusetts and Maine, soon after the latter became an independent State; that both States have long been in the habit of granting permits to cut timber there without being molested from any quarter; that many persons have purchased these lands of Maine, and entered into their actual occupation, and that in various other ways Maine has exercised a jurisdiction which may fairly be regarded as exclusive over this territory. Under these circumstances information was received that a body of armed men had gone into this territory, and were cutting vast quantities of the timber, defying the power of this State to prevent them. On these facts being communicated to the Legislature, the two branches immediately directed the land agent to take with him a sufficient force to arrest these depredators and to break up their enterprise. The party of the land agent is now in the territory, engaged in executing the trust with which it was charged, and, with my consent, will never leave it while the protection of the property of the State from plunderers renders it necessary for them to remain. If your excellency chooses to send an armed force to attempt their expulsion, I can only say that this State will endeavor to meet such an attempt as it will deserve. I have no threats to make, no boastings to indulge. If Maine does her duty, as I trust in God she will, nothing that I could say in advance would add to the glory of her career. If she proves recreant to her duty, and tamely submits to be expelled from her territory by a force that she could successfully resist, nothing that I can say would tend to diminish the measure of her ignominy and disgrace.

I have the honor to be, with high respect, your excellency's obedient servant,

JOHN FAIRFIELD, *Governor of Maine.*

His Excellency JOHN HARVEY,

Lieutenant Governor of New Brunswick.

STATE OF MAINE.

Resolve for the protection of the public lands.

Resolved, That the honor and interest of this State demand that a sufficient military force be forthwith stationed on the Aroostook river, west of the boundary-line of the State, as established by the treaty of 1783; and

on the river St. John, if found practicable, at such points as may be best adapted to the object, to prevent further depredations on the public lands, and to protect and preserve the timber and other lumber already cut there by trespassers, and to prevent its removal without the limits of the State.

Resolved, That the sum of eight hundred thousand dollars be, and hereby is, appropriated for the purpose of enabling the Executive to carry out the purposes of the foregoing resolve, and the resolve passed January 24, 1839; and that the Governor be, and hereby is, authorized, with the advice of Council, to draw his warrant for the same, from time to time, as it may be needed for that purpose.

HOUSE OF REPRESENTATIVES,

February 18, 1839.

This resolve having had two several readings, passed to be engrossed. Sent up for concurrence.

CHARLES WATERHOUSE, *Clerk*.

IN SENATE, February 19, 1839.

This resolve having had two several readings, passed to be engrossed, in concurrence.

WILLIAM TRAFTON, *Secretary*.

A true copy.

Attest: WILLIAM TRAFTON,
Secretary of the Senate.

DEPARTMENT OF STATE,

Washington, February 26, 1839.

SIR: In acknowledging, by direction of the President, your communications to him of the 18th and 19th instant, on the subject of recent occurrences in the disputed territory, and the proceedings of the authorities of Maine and New Brunswick growing out of them, I have the honor to communicate to your excellency copies of a message this day transmitted by the President to Congress, and of a note from the British minister, with my answer.

From the last-mentioned paper, it will be perceived that the President entirely concurs with your excellency in denying the existence of any such agreement between the United States and Great Britain as that appealed to on behalf of the latter, and supposed to give her, pending the boundary question, exclusive jurisdiction over the territory in dispute. It is hoped that, in consequence of the representations upon this head, conveyed through my note to Mr. Fox, to the authorities of New Brunswick, any further advance of British troops towards or into the territory will be suspended; that this will be the signal for the cessation of all military array and movements on both sides of the line, and for the simultaneous release of the agents of the respective parties now in custody; and that the renewed efforts now making to effect an amicable adjustment of the principal difference will, at an early day, be successful.

If, unfortunately, the President should be disappointed in this expectation, your excellency may rest assured of the disposition and readiness of the Executive branch of the Government of the United States to perform such further duties as may be imposed upon him by circumstances.

Looking, in the mean time, to a satisfactory termination of present difficulties, the President instructs me to suggest to your excellency the expediency of a mutual understanding between the authorities of Maine and those of New Brunswick, for the prevention of further depredations upon the territory in dispute. Such an understanding, dictated by a proper spirit of forbearance, and the mutual desire for the preservation of peace which is supposed to prevail on both sides of the line, might, it is believed, be easily effected, with an express reservation that it should not be so construed as to impair the right of the parties, whether to the actual proprietary title or the temporary jurisdiction of either over the disputed territory, or any portion of it. No objection is perceived to this course. Should the Governor of New Brunswick be disposed to acquiesce, it may be, as to its duration, until the decision of the British Government in the matter can be obtained; and if, for reasons which cannot be apprehended, an arrangement of the character referred to should prove impracticable with the local authorities, the President, on being informed thereof, will use endeavors to make such an arrangement with the Government of Great Britain. It would be lamentable, indeed, and present a singular spectacle, if, while the parties to whom it belongs to adjust the main point in controversy are engaged in discussions, with a sincere desire to bring them to a satisfactory result, the peace of the country, and the real and best interests of the people more directly concerned, were to be involved by disagreements between the local authorities upon points of secondary importance, and susceptible, as it is believed, of being easily reconciled. It would produce consequences which the nation at large could not but deplore, and which, the President believes, the Government and people of Maine are as anxious as he is to use every effort to avert.

I have the honor to be, sir, your obedient servant,

JOHN FORSYTH.

His Excellency JOHN FAIRFIELD,
Governor of Maine, Augusta.

Mr. Fox to Mr. Forsyth.

WASHINGTON, *February 23, 1839.*

Sir: I have this day received a despatch from Major General Sir John Harvey, Lieutenant Governor of the province of New Brunswick, containing the enclosed proclamation, issued by his excellency on the 13th inst. and conveying to me the information of an unjustifiable incursion into a part of the disputed territory, situated on the Aroostook river, by an armed body of militia from the State of Maine, acting to all appearance under the authority of the Government of the State.

The professed object of this incursion is stated to be to capture or drive away a party of persons who are alleged to be trespassing and cutting timber on lands in the neighborhood of the Aroostook river.

But it is well known that all that part of the disputed territory is placed under the exclusive jurisdiction of her Majesty's authority; and that it is bound to remain so by explicit agreement between the Government of Great Britain and the United States, until the final settlement of the question of the Northeastern boundary.

Her Majesty's officers, therefore, cannot permit any act of authority,

such as is now attempted by the State of Maine, to be exercised within the territory in question; and it will become the bounden duty of the Lieutenant Governor of New Brunswick to resist the attempt, and to expel by force the militia of Maine if the present incursion be persisted in.

Under these circumstances I invoke the immediate attention of the General Government of the United States to prevent the threatened collision, by causing the authorities of Maine to withdraw voluntarily their militia force, and to desist, in obedience to the agreement subsisting between the two nations, from their present unwarrantable proceeding.

I avail myself of this occasion to renew to you the assurance of my high respect and consideration.

H. S. FOX.

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,

Washington, February 25, 1839.

SIR: Your letter of the 23d instant, calling upon the General Government to interfere to prevent a collision between the Governments of New Brunswick and the State of Maine, which you apprehend will be the consequence of a recent attempt made by the State authorities to expel trespassers upon the public lands in the territory in dispute between the Governments of the United States and her Britannic Majesty, has been laid before the President, who, after a careful examination of its contents, has instructed me to reply that your own note and the proclamation of Sir John Harvey, the Lieutenant Governor of New Brunswick, which was sent with it, have been both prepared under erroneous impressions as to the facts of the transaction to which they relate. Communications from the Government of Maine enable me to state to you that the recent movement in the disputed territory was founded upon a resolution of the Legislature, a copy of which is herewith enclosed. You will perceive that no military occupation of the territory was contemplated, the sole object having been to remove trespassers who, in violation of the right of property, to whomsoever it may belong, and the declared intentions of both Governments, were gradually and hourly diminishing its value. From the authority given to the agents of the State of Maine, and from information of an undoubted authenticity, it is known that the persons engaged in this affair, although armed, from an apprehension of resistance from the large body of armed lawless aggressors on the public domain, were not detailed from the militia of the State for that purpose, but were employed by the land agent of Maine and one of her sheriffs, who were to direct and control all their movements. Had the sole and avowed object been accomplished, the party would have immediately withdrawn, leaving the territory, in all other respects, in the condition in which it was found by them. This termination of the enterprise has been thus far suspended by the unexpected seizure and detention of the land agent of Maine, who was arrested by the trespassers when in the act of putting himself in communication with the agent of the Government of New Brunswick, appointed by that Government to watch the trespassers he had himself been directed to arrest or drive off. Her Majesty's Government cannot be surprised, however, much as it may regret, with the President, that Maine has

thought herself compelled to adopt some decisive movement on the subject, when it is recollected that, as long ago as the year 1829, Mr. Clay, then the Secretary of State, apprized the British minister, Sir Charles R. Vaughan, on the occurrence of similar, but less extensive violations of the property in question, alleged to have been authorized by the Colonial Government, that, if such trespasses were authorized or countenanced on the disputed territory, it was not to be expected that the State of Maine would abstain from the adoption of preventive measures. It is true that, in the present instance, the trespassers were not believed to have been either countenanced or authorized by her Majesty's Colonial Government, but that circumstance would, itself, lead to some surprise at the excitement produced by an act equally required by the interests of both nations. Sir John Harvey has, indeed, subsequently taken measures which prove his own conviction of the necessity of interference on the part of one or both Governments to arrest a systematized plundering of the public domain. The President hopes, therefore, that, as you will perceive that there was no military occupation attempted; that the object in view was perfectly lawful, the necessity of it being acknowledged by the act of Sir John Harvey; that, as soon as the purpose is accomplished, the agent and his assistants will, as heretofore on like occasions, be withdrawn, that you will not find it difficult to satisfy her Majesty's colonial authorities that there can be no occasion for collision with Maine, growing out of the renewed exercise, on her part, of an oft-asserted right due to herself, and useful, in this instance, to her Majesty's Government, whatever may be the result of the pending negotiation, especially on the supposition that the territory in question should be hereafter found to belong to the British provinces. In that event, the President persuades himself, from the known disposition and long-tried forbearance of the State authorities, that he will find it easy to prevent any military array on the territory on the part of Maine, or procure the voluntary disbandment of any militia that may have been brought together from the apprehension of a collision with the Colonial Government. The propriety of the prompt release, on each side, of the agents of the State and Colonial Governments, who have been arrested, as the President believes, under a mutual misapprehension, is so obvious, that he takes it for granted they will be respectively set at liberty, if that has not been already done.

It would give me pleasure to be able to conclude this communication without further remark; but there is another error in your letter, of so grave a character, that, to avoid all possibility of a misapprehension, the President has made it incumbent upon me to call it to your especial notice. It is the assertion that "it is well known that all that part of the disputed territory is placed under the exclusive jurisdiction of her Majesty's authority; and that it is bound to remain so, by explicit agreement between the Governments of Great Britain and the United States, until the final settlement of the question of the Northeastern boundary." That Great Britain has sought, on several occasions, to prove argumentatively that the exclusive jurisdiction vested with her until the final settlement of the question, I shall not controvert; but the question of title, and of the right of jurisdiction as consequent thereon, or as resulting from the previous exercise thereof, has been a subject of continued controversy between the two Governments, in respect to which neither has released or waived its claims. So far from any relinquishment of right of jurisdiction having been

made, or any agreement, either express or implied, entered into on the part of the Government of the United States, of the nature alleged by the Lieutenant Governor of New Brunswick, and affirmed also in your note of the 23d instant, it will appear from the whole course of the correspondence between the two Governments, extending through a series of years, that that of the United States has throughout, and on frequent occasions, solemnly protested as well against the existence of the right to the exclusive possession and jurisdiction as to the exercise thereof; and has upon every proper occasion asserted that both belonged to Maine and to the United States. The assertion now made, therefore, appears to the President to be so extraordinary, that I am instructed to ask from you a full explanation of the ground upon which it is placed, as the President owes it in duty to the General and State Governments, that the error may be traced to its source, and that the two Governments may know distinctly, and without delay, the true extent of their understanding on this point, that no unfortunate or fatal consequences shall spring from any misconception on either side in respect to it. In the present state of the intercourse between Great Britain and the American continent, and the rapidity with which her Majesty's Government can be consulted on all questions arising with this Government, or in her Majesty's possessions, the President believes that this state of the question should, of itself, furnish an amply sufficient reason to prevent any hasty action on the part of the Colonial Government, which may lead to results fatal to the good understanding, and eminently hurtful to the prosperity of the two countries.

I cannot take leave of this subject without adverting to the delay of her Majesty's Government in making some decisive proposition to advance the final settlement of the question of boundary; thus exposing the two Governments, as the present condition of things on the frontier too clearly shows, to consequences which neither can look to without pain, and full of mortification to that one to whom any unnecessary procrastination may be justly attributable.

I avail myself of the occasion to offer you assurances of the high respect and consideration with which I have the honor to be your obedient servant.

JOHN FORSYTH.

Mr. Fox to Mr. Forsyth.

WASHINGTON, February 25, 1839.

SIR: I have the honor to acknowledge the receipt of your letter of this day's date, written in reply to a communication which I addressed to you on the 23d instant, upon the subject of the dispute that has arisen between the Governments of New Brunswick and Maine.

With reference to that portion of your letter which treats of the question of actual jurisdiction, pending the negotiation for the settlement of the disputed boundary, I deeply regret to find that the Government of the United States is now placed directly at variance with the Government of her Majesty in its understanding of that question.

I shall lose no time in transmitting your letter to her Majesty's Government, in order that I may be able to convey to you, if necessary, a full knowledge of the views and intentions of Great Britain upon this part of the subject. I confine myself, for the present, to protesting, in the most

formal manner, against the views set forth in that part of your letter to which I am referring. I adopt this course in preference to entering at once into a detailed discussion of the matter, because, in the first place, I shall best be able to do so after a direct communication with my Government; and, in the second place, because I entertain the hope that an early settlement of the general question of the disputed boundary may render this subordinate point of difference of little moment.

I avail myself of this occasion to renew to you the assurance of my high respect and consideration.

H. S. FOX.

Hon. JOHN FORSYTH, &c.

MESSAGE OF THE GOVERNOR TO THE LEGISLATURE.

To the House of Representatives :

Under the order of the House of Representatives of the 19th instant, I herewith lay before you certain correspondence since had with the Lieutenant Governor of New Brunswick, and the correspondence between George Fred. Street, Esq., Solicitor General for the province of New Brunswick, and Charles Jarvis, Esq., provisional land agent of this State.

The reply of Mr. Jarvis to the inadmissible and preposterous claims and pretensions of her Majesty's Solicitor General for the province of New Brunswick, must, I think, command the unqualified approbation of every one having a just regard for the honor of his State. It is in the true spirit. And I have every reason to believe that the same spirit animates the whole body of our citizens. While it prevails, though success will be deserved, defeat can bring no disgrace.

You will see by the accompanying papers, and I take great pleasure in communicating the fact, that Mr. McIntire and his assistant have been released. It was, however, upon their parole of honor to return when there-to required by the Government of that province. Immediately upon the receipt of this information, I advised the release of James Maclauchlan, Esq., provincial land agent, and his assistant, *upon the same terms.*

Since my last communication the land agent's forces at the Aroostook have been reinforced by about 600 good and effective men, making the whole force now about 750.

I have a letter from Mr. Jarvis, dated the 19th, before the reinforcement had arrived, and when his company consisted of only about 100 men. He says he "found the men in good spirits, and that they had been active in making temporary, but most effectual, defences of logs," &c.

After describing his defences, he says: "By to-morrow noon a force of 100 men would make good our position against 500. *Retreating, therefore, is out of the question; we shall make good our stand against any force that we can reasonably expect would be brought against us.*" He says, further: "I take pleasure in saying to you that a finer looking set of men I never saw than those now with me, and that the honor of our State, so far as they are concerned, is in safe keeping."

The draught of 1,600 men from the third division has been made with great despatch. The troops, I understand, arrived promptly at the place of rendezvous at the time appointed, in good spirits, and anxious for the orders to march to the frontier. The detachment from the second division

will be ordered to march at the earliest convenient day; probably on Monday next. Other military movements will be made, which it is unnecessary to communicate to you at this time.

The mission of Colonel Rogers to the Lieutenant Governor of New Brunswick has resulted successfully, so far as relates to the reclaim of the land agent and his assistant, and has been conducted in a manner highly satisfactory.

JOHN FAIRFIELD.

COUNCIL CHAMBER, *February 21, 1839.*

Sir John Harvey's letter to Governor Fairfield.

GOVERNMENT HOUSE,

Frederickton, (N. B.) February 18, 1839.

SIR: I have the honor to acknowledge the receipt, by the hands of the honorable Mr. Rogers, of your excellency's letter of the 15th inst. Mr. McIntire, and the gentlemen with him, have been subjected to an examination before her Majesty's attorney general of this province, who has reported to me that the offence of which they stand charged is one rather against the laws of nations, and of treaties, than against those of this province; they must accordingly be regarded as "state offenders." In this view, their disposal rests exclusively with her Majesty's Government, to which I shall accordingly report the case; in the mean time, I have had the pleasure in directing that they shall be immediately allowed to return to the State of Maine, upon pledging their parole of honor to present themselves to the Government of this province, whenever her Majesty's decision may be received, or when required to do so. The high respectability of their characters and situations, and my desire to act, in all matters relating to the disputed territory, in such a manner as may evince the utmost forbearance consistent with the fulfilment of my instructions, have influenced me in my conduct towards these gentlemen; but it is necessary that I should, upon this occasion, distinctly state to your excellency—

1st. That if it be the desire of the State of Maine that the friendly relations between Great Britain and the United States should not be disturbed, it is indispensable that the armed force from that State now understood to be within the territory in dispute, be immediately withdrawn, as, otherwise, I have no alternative but to take military occupation of that territory, with a view to protect her Majesty's subjects and to support the civil authorities in apprehending all persons claiming to exercise jurisdiction within it.

2d. That it is my duty to require that all persons, subjects of her Majesty, who may have been arrested in the commission of acts of trespass within the disputed territory, be given up to the tribunals of this province, there to be proceeded against according to law.

3d. That in the event of the rumor which has just reached me, relative to the arrest, detention, or interruption of James Maclauchlan, Esq., the warden of the disputed territory, being correct, that that officer be enlarged, and the grounds of his detention explained. Mr. Rogers takes charge of this letter, of which a duplicate will be placed in the hands of the honorable Mr. McIntire, with both of whom I have conversed, and communicated to

them my views in regard to the actual position in which I shall be placed, and the measures which will be forced upon me, if the several demands contained in this letter be not complied with; and I have reason to believe that Mr. McIntire leaves me fully impressed with the anxious desire which I feel to be spared the necessity of acting as the letter of my instructions would both warrant and prescribe.

With regard to trespassers upon the lands of the disputed territory, I beg to assure you that the extent to which those trespasses appear to have been carried, as brought to my knowledge by recent occurrences, will lead me to adopt, without any delay, the strongest and most effectual measures which may be in my power for putting a stop to and preventing a recurrence of such trespasses.

With high respect, I have the honor to be your excellency's obedient servant,

JOHN HARVEY,
Major General, Lieutenant Governor, &c.

Copy of the parole of honor signed by Mr. McIntire.

FREDERICKTON, (N. B.) *February 18, 1839.*

Whereas the offence wherewith you stand charged has been pronounced by the law officers of this province as one rather against the law of nations and of treaties than against the municipal laws of this country, and as such must be referred for the decision of her Majesty's Government, you are hereby required to pledge your parole of honor to present yourselves at Frederickton, in this province of New Brunswick, whenever such decision shall be communicated or you shall be otherwise required by or on the part of this Government; and, for this purpose, you shall make known the place or places to which such requisition shall be sent.

J. HARVEY.

To the HON. RUFUS MCINTIRE, GUSTAVUS G. CUSHMAN, THOMAS BARTLETT, and EBENEZER WEBSTER, *Esquires.*

I have no hesitation in giving, and hereby do give, the parole of honor above referred to.

Governor Fairfield's reply to Sir John Harvey.

SIR: I have the honor to acknowledge the receipt of your excellency's communication of the 18th instant, by the hand of Col. J. P. Rogers.

To your demand for the discharge of the persons arrested by the authorities of this State for being engaged in acts of trespass upon the public lands of this State, I have to say, that the persons named are now in the *custody of the law*. With that custody I have neither the disposition nor the authority to interfere.

In regard to James Maclaughlin, Esq., provincial land agent, and Mr. Tibbets, his assistant, I have advised that they be released upon the *same*

terms upon which the Hon. Rufus McIntire and his assistants were released, to wit: upon their *parole of honor*, to return to Bangor whenever they should be thereto required by the executive Government of this State, to answer to any charges that may be brought against them for their acts and proceedings upon what your excellency is pleased to call "the disputed territory."

For a reply to the remainder of your excellency's communication, I must refer you to my letter of the 18th instant, which you will receive by the hand of R. English, Esq.

I have the honor to be, with high respect, your excellency's obedient servant,

JOHN FAIRFIELD,
Governor of Maine.

His Excellency Sir JOHN HARVEY,
Lieutenant Governor of New Brunswick.

The Solicitor General's letter to Mr. Jarvis.

AT THE MOUTH OF THE AROOSTOOK, RIVER ST. JOHN,
Province of New Brunswick, February 17, 1839.

SIR: I am directed by his excellency Major General Sir John Harvey, Lieutenant Governor and commander-in-chief of this province, to express to you his great surprise at the very extraordinary occurrence of an armed force, of the description now with you, having entered upon the disputed territory, so called, and attempted to exercise a jurisdiction there foreign to the British Government; seizing upon and maltreating British subjects, and retaining many of them prisoners, without having, in the first instance, given any notice or made any communication whatever to the Government authorities of this province of such your intentions, or the causes which have led to these acts of aggression. If you are acting under any authority from your own Government, the proceedings are still more unjustifiable, being in direct defiance and breach of the existing treaties between the Central Government of the United States and England. If you have not any such authority, you and those with you have placed yourselves in a situation to be treated by both Governments as persons rebelling against the laws of either country; but be that as it may, I am directed by his excellency to give you notice that, unless you immediately remove with the force you have with you from any part of the disputed territory, so called, and discharge all British subjects whom you have taken prisoners, and at once cease attempting to exercise any authority in the said territory not authorized by the British Government, every person of your party that can be found or laid hold of, will be taken by the British authorities in this province, and detained prisoners to answer for this offence, as his excellency is expressly commanded by his sovereign to hold this territory inviolate, and to defend it from any foreign aggression whatever, until the two Governments have determined the question of to whom it shall belong; and to enable him to carry these commands into full effect, a large military force is now assembling at this place, part of which has already arrived and will be shortly completed to any extent that the service may require. In doing this, his excellency is

very desirous to avoid any collision between her Majesty's troops and any of the citizens of the United States that might lead to bloodshed; and if you remove from the territory peaceably and quietly, without further opposition, such collision will be avoided, as, in that case, his excellency will not think it necessary to move the British troops further; but if you do not, he will, in execution of the commands of the British Government, find it necessary to take military possession of the territory, in order to defend it from such innovation; and the consequences must be upon the authority, if any, upon which you act.

The three gentlemen who were with you, and were taken prisoners by some of our people, have been forwarded on to Frederickton by the magistrates of the country, and will be detained, (as all persons heretofore have been who, on former occasions, were found endeavoring to set up or exercise any foreign jurisdiction or authority in the territory in question.) They will, however, be well treated, and every necessary attention paid to their comfort; but I have no doubt they will be detained as prisoners to be disposed of as may hereafter be directed by the British Government. The warden of the disputed territory, Mr. Maclauchlan, went out, I understand, a few days since to explain all this to you, but, he not having returned, we are led to suppose you have still further violated the laws and treaties of the two nations by detaining him, who was a mere messenger of communication, together with Mr. Tibbets, the person who was employed to convey him. But as Mr. Maclauchlan was an accredited officer, acknowledged by the American Government as well as the British, and appointed for the very purpose of looking after the territory, I trust you will, on reflection, see the great impropriety and risk you run, even with your own Government, by detaining him or his attendant, Mr. Tibbets, any longer. I shall await at this place to receive your answer to this.

I am, sir, your obedient servant,

GEO. FRED. STREET,
Solicitor General of the Province.

Mr. Jarvis's reply to the Solicitor General of New Brunswick.

CONFLUENCE OF THE ST. CROIX STREAM, AROOSTOOK RIVER,
Township No. 10, State of Maine, February 19, 1839.

SIR: Your communication of the 17th instant has been this moment received. The solicitor general of the provinces must have been misinformed as to the place where the force under my direction is now located, or he would have been spared the impropriety of addressing such a communication to me, a citizen of Maine, one of the North American confederacy of the United States.

It is also to be hoped, for the honor of the British empire, that, when Major General Sir John Harvey, Lieutenant Governor and Commander-in-chief of the province of New Brunswick, is made acquainted with the place where the honorable Rufus McIntire, land agent of the State of Maine, and the two other gentlemen with him, were forcibly arrested by a lawless mob, that he will direct their immediate discharge and bring the offenders to justice.

The officer to which you allude, and the person in company with him, were arrested for serving a precept on a citizen of Maine. He was sent on immediately to Augusta, the seat of Government, to be dealt with by the authorities of the State. Their persons are not, therefore, in my power, and application for their discharge must be made to the Government of the State.

If, however, I have been in error as to your being under a mistake as to the place where I am now stationed, on land which was run out into townships by the State of Massachusetts, and covered by grants from that State before Maine was separated from Massachusetts, and which has therefore been under the jurisdiction of Maine since she has taken her rank among the independent States of the North American Union, then, as a citizen of Maine in official capacity, I have but one answer to return to the threat conveyed. I am here under the direction of the executive of the State, and must remain until otherwise ordered by the only authority recognised by me; and deeply as I should regret a conflict between our respective countries, I shall consider the approach to my station, by an armed force, as an act of hostility, which will be met by me to the best of my ability.

I am, sir, your most obedient servant,

CHARLES JARVIS,
Land Agent.

Extracts from a Report made by E. L. Hamlin, land agent of Maine, showing the possession and operations of that State on the Aroostook territory, dated January 1, 1839.

“In the month of April, Ebenezer Webster, Esq., of Orono, was employed to examine the public lands, situate on the St. John and Aroostook rivers, and ascertain what trespasses had been committed in that quarter, and report what measures could be adopted to prevent future depredations. It will be seen from his report, accompanying this, that for many years past great depredations have been committed on those rivers.

“The method adopted by the provincial authorities to stop trespassing, by seizing the timber after it had been cut, has had but little tendency to stop depredations, and as there has been no road opened, by which our agents could have a communication with this country, the trespassing has gone on, increasing from year to year, until nearly all the timber on the banks of these rivers has disappeared.

“Upon consultation with the land agent of Massachusetts, it was determined to expend a portion of the money appropriated for the Aroostook road, on the upper part, which would not be turnpiked the present season so as to make a good winter road, and to appoint an agent to remain on the Aroostook river during the winter, and by keeping up a communication with this quarter to prevent, if possible, the timber from further depredation.

“About the middle of October, information reached this office that persons were trespassing on township number 10, in the 5th range. I immediately left Bangor, in company with George W. Buckmore, who had received a special deputation, for the purpose of arresting this tres-

pass, and putting into operation the arrangements made between the two land agents. Upon our arrival at township number 10, we found that the trespassers had left, had ascended the Great Machias, and were then at work on township number 11, in the 6th range, belonging to Maine. We found here Benjamin Gardner, a settler from township letter G, in the 2d range, with a crew of six men, and Lewis Bradley, a settler from the same place, with a crew of five men, and a team of six oxen. They had been here about a week, and had made two hundred and fifty tons of timber, including that cut upon township number 10.

"Writs of trespass were served upon these persons, their cattle and supplies attached, and the whole expedition broken up.

"We here learned that preparations were making to cut several thousand tons of timber on Beaver brook, which we ascended about five miles, and found two camps recently built on township number 13, in the 5th range, belonging to Massachusetts, but the crews had left and gone down river, hearing, most probably, of the trouble on the Machias. Peter Bull, a settler on township letter G, had engaged to supply these persons, and to haul their timber. We called on him, on our way down, and informed him, that an agent would be employed by Maine and Massachusetts, to remain on the river during the winter, and that his cattle would be taken off if found engaged in any trespass.

"He informed us that he should stop at once, that the crews should not return to number 13, and that he would not be concerned in any farther depredation.

"On township number 12, in the 4th range, belonging to Maine, we found Mr. Mumford, a settler, and two persons, named Churchill and Earskins, from New Brunswick, building a camp. Upon representing to these persons that their teams would be taken off if they persisted, they immediately quit.

"About a mile up the Salmon stream, we found a crew of six men, located for the winter, on township number 13, in the 3d range, belonging to Massachusetts. They had got in their supplies, and were just beginning to cut timber, having made about one hundred and fifty tons. Their names were Wilder Stratton, James Swetor, David Swetor, Michael Keely, James Coffee, and John Smiley, all from New Brunswick. William Pyle, a settler, had agreed to haul their timber on shares. A writ of trespass was served upon these persons, their supplies attached, and the depredations stopped.

"Near the mouth of the Little Madawaska, we met Captain Maclauchlan, going up the river, with a crew of six men. He informed me that he was sent up by the Governor of New Brunswick to drive off the trespassers, and, if necessary, to cut up their timber.

"I informed him what I had done with the trespassers above; and also informed him of the depredations which I understood were about to be committed on the Madawaska and St. John rivers, above the Grand falls. He replied, that he should visit those places before he returned, and would do all in his power to protect the timber from trespass.

"Below this, we found several crews just commencing to make timber, all of whom, upon representing to them the consequences of continuing their trespass, immediately desisted, and left the woods. I did not visit the St. John river, being of opinion that it would be in vain to attempt to arrest trespassers, or to secure the timber from pillage on that

river, until a road should be opened, by which the land agent could reach it without being compelled, as he now is, to pass through the province of New Brunswick. From twelve to fifteen thousand tons of timber would undoubtedly have been cut by these trespassers, the ensuing winter, if they had been unmolested; and this amount of timber has thus been saved, by opening a communication to the Aroostook river, so as to bring these depredators within the reach of civil process.

"The land agent of Massachusetts having granted several permits to cut timber near the head-waters of the Aroostook, the most of those trespassers who were routed ascended the river, and engaged to work for the winter, with those holding permits, so that no farther trouble is apprehended from them at present. Mr. Buckmore has been appointed to remain, during the winter, on the Aroostook territory, and it is confidently believed, that with these precautionary measures, the townships on this river will be effectually protected from further depredation."

"During the survey of townships number ten and twelve, the surveyor general received a visit from James Maclauchlan, of Frederickton, who protested against the survey. I herewith annex a copy of the correspondence which took place between said Maclauchlan and the surveyor general.

"It will be seen from the written communication of Captain Maclauchlan, that the British Government claim to exercise jurisdiction over the whole northern part of the State, by virtue of 'existing arrangements subsisting between the British Government and that of the United States.' I am not aware of any arrangements between the Government of the United States and Great Britain, which have surrendered to the latter the jurisdiction of the disputed territory.

"It is believed that nothing further has been done between the two Governments, than intimations from each that the other should forbear to exercise any act of jurisdiction, pending the negotiation, beyond the territory then in actual possession of each Government, as may be seen from the correspondence between the ministers of the two Governments in 1832 and 1835."

"As Massachusetts and Maine, since they became independent Governments, have always had the possession of the territory south of the St. John, it is believed that no other opposition than the formal protest of Mr. Maclauchlan will be attempted by the provincial authorities against the further prosecution of surveys which may be made in this quarter."

"Written applications have been filed in this office, by different persons, for the privilege of selecting lots and erecting mills, under the provisions of the new land law, in townships numbers three, eleven, and thirteen, in the fourth range, township number twelve, in the fifth range, and township number nine, in the sixth range, west from the east line of the State; and settlements will be commenced on most of these townships this season, if not on all.

"Joseph Pollard and others commenced last spring erecting mills on township number nine, in the fourth range, on the St. Croix stream, which will be finished in a few weeks; and they claim the privilege of selecting twenty lots in that township, as soon as it shall be surveyed.

"George W. Buckmore and others have completed a dam across the Great Machias river, in township number eleven, in the fifth range, and are now engaged in building mills, which will be finished early in the spring.

"This township belongs to Massachusetts; and lying between townships numbers ten and twelve, belonging to Maine, surveyed for settlement the last year, and being in the midst of the improvements that our citizens are making on the Aroostook, it is very important that Maine should become the owner of this township."

"The Aroostook road has been made the last year about twenty-three miles; and, including what was built the year before, it has been finished to township number five, in the sixth range, a distance of thirty miles, under the superintendence of Ira Fish, Esq., of Lincoln, whose report is herewith communicated."

Colonel Webster's report to the Land Agent of Maine.

ORONO, May 7, 1838.

SIR: Agreeably to my instructions from the land office, dated March the 20th, for the purpose of examining the public lands upon the St. John and Aroostook rivers, to ascertain, as near as may be, the amount of timber cut by trespassers the past winter, I have attended to that duty, and submit the following report:

I left Orono on the 9th day of April, and arrived at the Grand falls, on the St. John, on the 12th.

The next day I proceeded up the river to the boundary-line, which is two or three miles above the falls.

One mile above the boundary line, I found hauled upon the bank of the river about three hundred tons of timber, of a very large size; the owner I could not ascertain. This was on the south side of the river.

On the north side, about one mile above this, I found about one hundred tons; and about one mile farther up, I found, on the south side, about two hundred tons. About twelve miles from the boundary-line, at the mouth of Grand river, I found about four hundred tons, cut by Debays, a Frenchman, who was supplied by Messrs. Smith and Upham, of Woodstock, New Brunswick. I then proceeded to the mouth of the Madawaska, where I learned that many teams had been at work during the winter, on what was called the Seignory, near the head of this river. I then proceeded up the St. John's as far as Captain Joseph Machaux's, where the Aroostook road, as laid out by the surveyor general, strikes the St. John's. I here ascertained that five teams had been getting timber during the winter, on the main St. John, above the mouth of the St. François river.

The names of the men were Christopher Macay, Joseph Damewick, Captain Machaud, N. M. Wheelock, and I. Cating; the three first are Frenchmen, living at Madawaska, the other two live in New Brunswick. They have cut, from the best information I could obtain, about three thousand tons.

I here engaged a guide, and, after purchasing provisions, snow shoes, &c., started through the woods for the Aroostook river. I left the road line to the west; and, after travelling about six miles south, I struck the Fish-river lake. This lake lies about north and south, and is eight miles long. I travelled about six miles on this lake, and saw fine timber growing upon the shores. I discovered from the lake a very extensive ridge of

hard-wood land, very level, lying nearly north and south, about a mile from the lake, to the eastward, which I think would afford a much better location for a road than the one selected.

I proceeded westwardly to the outlet of the lake, about two miles. I followed down the outlet about three-fourths of a mile, to another smaller lake on Fish river, which abounds with fine timber. I crossed this lake about three miles to the outlet, thence down the outlet until I struck the road line about one mile from the outlet of the second lake. I followed down the road to the fifteen-mile tree, where I encamped. The snow was two feet deep, on a level, between the Aroostook and St. John's rivers. I proceeded, the next day, down the road to the twenty-eight-mile tree, where we encamped.

This distance was mostly over black land. The next day I travelled to the thirty-nine-mile tree, where I struck Beaver brook; and, finding that teams had been passing up and down, I concluded to follow the stream down to the Aroostook, distant about five miles.

I found on this stream about four hundred tons of timber, which, I think, must have been taken from township number 13, in the fourth range. Considerable more than this must have been cut above the road line, from the appearance of teams passing, &c., making in the whole at least a thousand tons cut on this stream. From the best information I could get, this timber was cut by Peter Bull, and two men by the name of Gardner, and a Mr. Brown. Peter Bull is a settler upon the Aroostook, the other men are from the provinces.

On township number 12, in the fifth range, I found about five hundred tons, cut on the south side of the Aroostook by Peter Bull and two men by the names of Becket and Hale; the two latter being from the Province.

I then proceeded to township number 10, in the fifth range, belonging to Maine, where I found about five hundred tons, cut by Samuel Leavitt, a settler, and Mr. Hooper, from the province.

William Johnson and several others have been getting timber on the Little Madawaska; and, from the best information I could obtain, they would cut about one thousand tons. They were all from the province.

Four men, Joseph Trumball and Daniel Dow, Americans, and William Brown and John Auxley, from the province, have been trespassing on township number 9, in the sixth range, and have made about four hundred tons.

I have no doubt the timber cut on the disputed territory—on the St. John's and Aroostook rivers—the last winter, amounts to ten thousand tons. As the largest trees only are selected, such as will square from twenty to thirty inches, and nothing but clear stuff cut out, there is a great waste of the timber.

I have it from good authority, that, within the last fifteen years, there has been taken from the disputed territory several hundred thousand dollars worth of stumpage: The merchants on the St. John's river fit out teams and supply men, who go on and plunder the timber; the timber is driven below the line, and marked and rafted with timber cut under permits. This timber is frequently seized, but the trespassers generally manage to escape without much loss. The warden of the disputed territory frequently passes up the St. John's and warns off the trespassers, and notifies them that the timber will be seized; but the plunderers pay no

attention to him. They go on and cut timber, and, when the ice goes out, it is turned in and run down, and marked as province timber, cut below.

It is distressing to see our lands in that section of the country stripped by plunderers of valuable pine timber.

The trespassers follow up the St. John's and Aroostook rivers, and their tributary streams large enough to float timber; and where they are unable to get on teams, they get in the timber by hand; and in fifteen years, at the rate they go on, but little timber will be left.

I was upon the St. John's and Aroostook seven years ago, when I saw beautiful groves of pine timber standing on the banks of these rivers, now all plundered and carried off; and for thirty miles in extent upon the Aroostook river, every pine-tree fit for ton timber has been carried off, and every half mile presents some old timber landing where the trespassers made a winter's work.

There are a number of Americans settled on the Aroostook who have nothing to do with getting off timber, and feel very anxious that something should be done to prevent the British subjects from coming into their settlement and plundering the timber, which would be of great advantage to them when the boundary-line is settled.

As I have been requested to give my opinion upon the best mode to be adopted by the State to protect this country from trespass, I would say that, in my opinion, there is but one effectual mode to preserve the timber on these rivers; and that is, to open to them a good road. I would recommend that the Aroostook road be immediately made passable for a horse and wagon and ox teams. This can be done by grubbing out the centre of the road, and laying causeways over the swampy places, of sufficient width to be tramped, so that, ultimately, nothing will be lost to the State when the road is finished. It is very important that a good communication should be opened with the Aroostook *immediately*; for when this is done, an officer can be sent in, and remove the teams that are concerned in any trespass. When the trespassers find that the State is in earnest, and determined to arrest them, there will be no further trouble; but so long as the State takes no prompt measures to stop them, or bring them to justice, they will double their diligence and numbers, and increase their depredations. I understood that the lumbermen were making great calculations to cut timber on the disputed territory the ensuing season, as it was likely to bear a high price in the province. If this road should be made, as suggested, and an officer appointed to look after trespassers on the Aroostook, in my opinion there would be an end to depredations, and thousands of dollars would be saved yearly to the State. There are at present on the Aroostook American settlers sufficient to give all needful assistance to an officer in serving any legal process.

Another reason why the road should be completed, or made passable, is, that the settlers on the Aroostook require it, in order to have a communication with Bangor. Mr. Joseph Pollard, with seven men, has commenced building mills on the St. Croix, and many settlers intend moving to the Aroostook in June.

If it is therefore any object to the State to have the public lands settled, the State should be willing to open communications by which the settler can reach his abiding-place. If all the money appropriated upon the Aroostook road is laid out upon the lower part of the road, and nothing

done upon the upper part, and as it will not be completed beyond township No. 4, here the settlers must come to a dead stop.

They must either back in their provisions, or carry them up the Sebois; and so across a number of exceedingly bad carrying-places, in order to reach the Aroostook. I would, therefore, recommend that a portion of the Aroostook appropriation be laid out on the road above township No. 4, so as to make it passable for teams the whole distance.

I would also beg leave to suggest the propriety of opening a road fourteen feet wide from the Aroostook to the St. John's river, so as to be passable for teams in the winter. I think this road can be cut out, bridged, and causeways laid, the whole distance, forty-five miles, for about one hundred dollars per mile. This road will enable the State to have a communication with the St. John's river; and I have no doubt ten thousand dollars worth of stumpage may be saved the next winter.

The French inhabitants near the termination of this road, on the St. John's, are very desirous to have it opened.

I would recommend an alteration in the location of this road. The land over which this road now passes is covered with a black growth, and good land for roading, but not for settling.

A few miles to the eastward of this, there appears to be an extensive hardwood ridge, reaching from the St. John's to the Aroostook, excellent settling land, and over which the road should be located to accommodate settlements. The distance would not be increased, and the road would strike the St. John's, near the place where it now does.

By opening these roads, the State will be able to protect the timber on the Aroostook and St. John's rivers, and a rapid settlement of the country will immediately ensue, as large portions of the land in this part of the State are of a superior quality for cultivation.

I am, sir, with due regard, your obedient servant,

EBENEZER WEBSTER.

To ELIJAH L. HAMLIN, Esq., *Land Agent.*

To the House of Representatives of the United States:

I transmit to Congress copies of various other documents received from the Governor of Maine, relating to the dispute between that State and the Province of New Brunswick, which formed the subject of my message of the 26th instant; and also a copy of a memorandum signed by the Secretary of State of the United States and her Britannic Majesty's envoy extraordinary and minister plenipotentiary near the United States, of the terms upon which it is believed that all hostile collision can be avoided on the frontier, consistently with and respecting the claims on either side. As the British minister acts without specific authority from his Government, it will be observed that this memorandum has but the force of recommendation on the provincial authorities, and on the Government of the State.

M. VAN BUREN.

WASHINGTON, *February 27, 1839.*

EXECUTIVE DEPARTMENT,

Augusta, February 22, 1839.

SIR: I have the honor to enclose, herewith, copies of a letter from the Lieutenant Governor of New Brunswick, under date of February 18th, with my reply thereto; letter from the Solicitor General of the province of New Brunswick to the honorable Charles Jarvis, temporary land agent, under date of the 17th instant, with Mr. Jarvis's reply; parole of honor given by Messrs. McIntire, Cushman, Bartlett, and Webster, dated 18th February; my message to the Legislature, of the 21st instant.

These papers will give your excellency all the additional information, of any importance, not heretofore communicated, that has been received in relation to the state of affairs upon our Eastern frontier. I cannot but persuade myself that your excellency will see that an attack upon the citizens of this State by a British armed force is, in all human probability, inevitable, and that the interposition of the General Government at this momentous crisis should be promptly afforded.

I have the honor to be, with high respect, your excellency's obedient servant,

JOHN FAIRFIELD,
Governor of Maine.

His Excellency M. VAN BUREN,
President of the United States.

GOVERNMENT-HOUSE,

Frederickton, (N. B.) February 18, 1839.

SIR: I have the honor to acknowledge the receipt, by the hands of the honorable Mr. Rogers, of your excellency's letter of the 15th instant. Mr. McIntire, and the gentlemen with him, have been subjected to an examination before her Majesty's attorney general of this province, who has reported to me that the offence for which they stand charged is one rather against the law of nations and of treaties, than against those of this province. They must accordingly be regarded as "state offenders." In this view, their disposal rests exclusively with her Majesty's Government, to which I shall accordingly report the case. In the mean time I have had pleasure in directing that they shall immediately be allowed to return to the State of Maine, upon pledging their parole of honor to present themselves to the Government of this province whenever her Majesty's decision may be received, or when required to do so. The high respectability of their characters and situations, and my desire to act in all matters relating to the disputed territory in such a manner as may evince the utmost forbearance consistent with the fulfilment of my instructions, have influenced me in my conduct towards these gentlemen; but it is necessary that I should, upon this occasion, distinctly state to your excellency—

1st. That if it be the desire of the State of Maine that the friendly relations subsisting between Great Britain and the United States should not be disturbed, it is indispensable that the armed force from that State, now understood to be within the territory in dispute, be immediately withdrawn; as, otherwise, I have no other alternative but to take military oc-

cupation of that territory, with a view to protect her Majesty's subjects, and to support the civil authorities in apprehending all persons claiming to exercise jurisdiction within it.

2d. That it is my duty to require that all persons, subjects of her Majesty, who may have been arrested in the commission of acts of trespass within the disputed territory, be given up to the tribunals of this province, there to be proceeded against according to law.

3d. That, in the event of the rumor which has just reached me relative to the arrest, detention, or interruption of James Maclauchlan, Esq., the warden of the disputed territory, being correct, that officer be enlarged, and the grounds of his detention explained.

Mr. Rogers takes charge of this letter, of which a duplicate will be placed in the hands of the honorable Mr. McIntire, with both of whom I have conversed, and communicated to them my views in regard to the actual position in which I shall be placed, and the measures which will be forced upon me, if the several demands contained in this letter be not complied with; and I have reason to believe that Mr. McIntire leaves me fully impressed with the anxious desire which I feel to be spared the necessity of acting as the letter of my instructions would both warrant and prescribe.

With regard to trespassers upon the lands of the disputed territory, I beg to assure you that the extent to which those trespasses appear to have been carried, as brought to my knowledge by recent occurrences, will lead me to adopt, without any delay, the strongest and most effectual measures which may be in my power for putting a stop and preventing the recurrence of such trespasses.

With high respect, I have the honor to be,

Your excellency's most obedient servant,

J. HARVEY,

Major General, Lieut. Governor.

His Excellency the GOVERNOR of *Maine.*

EXECUTIVE DEPARTMENT,

Augusta, February 21, 1839.

SIR: I have the honor to acknowledge the receipt of your excellency's communication of the 18th instant, by the hand of Colonel J. P. Rogers.

To your demand for the discharge of the persons arrested by the authorities of this State for being engaged in acts of trespass upon the public lands of this State, I have to say that the persons named are now in the *custody of the law*. With that custody I have neither the disposition nor the authority to interfere.

In regard to James Maclauchlan, Esq., provincial land agent, and Mr. Tibbets, his assistant, I have advised that they be released upon the *same terms* upon which the honorable Rufus McIntire and his assistants were released, to wit, upon their *parole of honor* to return to Bangor whenever they should be thereto required by the Executive Government of this State, to answer to any charges that may be brought against them for their acts and proceedings upon what your excellency is pleased to call "the disputed territory."

For a reply to the remainder of your excellency's communication, I must refer you to my letter of the 18th instant, which you will receive by the hand of R. English, Esq.

I have the honor to be, with high respect,
Your excellency's obedient servant,

JOHN FAIRFIELD,
Governor of Maine.

His Excellency Sir JOHN HARVEY,
Lieut. Governor of New Brunswick.

AT THE MOUTH OF THE AROOSTOOK, RIVER ST. JOHN,
Province of New Brunswick, February 17, 1839.

SIR: I am directed by his excellency Major General Sir John Harvey, Lieutenant Governor and commander-in-chief of this province, to express to you his great surprise at the very extraordinary occurrence of an armed force of the description now with you, having entered upon the disputed territory, (so called,) and attempted to exercise a jurisdiction there, foreign to the British Government, seizing upon and maltreating British subjects, and detaining many of them prisoners, without having, in the first instance, given any notice, or made any communication whatever, to the Government authorities of this province of such your intention, or the causes which have led to these acts of aggression. If you are acting under any authority from your own Government, the proceeding is still more unjustifiable, being in direct defiance and breach of the existing treaties between the Central Government of the United States and England. If you have not any such authority, you, and those with you, have placed yourselves in a situation to be treated by both Governments as persons rebelling against the laws of either country. But, be that as it may, I am directed by his excellency to give you notice, that unless you immediately remove, with the force you have with you, from any part of the disputed territory, (so called,) and discharge all British subjects whom you have taken prisoners, and at once cease attempting to exercise any authority in the said territory not authorized by the British Government, every person of your party that can be found or laid hold of will be taken by the British authorities in this province, and detained as prisoners, to answer for this offence: as his excellency is expressly commanded by his sovereign to hold this territory inviolate, and to defend it from any foreign aggression whatever, until the two Governments have determined the question of to whom it shall belong; and to enable him to carry these commands into full effect, a large military force is now assembling at this place, part of which has already arrived, and will be shortly completed to any extent that the service may require. In doing this, his excellency is very desirous to avoid any collision between her Majesty's troops and any of the citizens of the United States, that might lead to bloodshed; and if you remove from the territory peaceably and quietly, without further opposition, such collision will be avoided; as, in that case, his excellency will not think it necessary to move the British troops further: but if you do not, he will, in the execution of the commands of the British Government, find it necessary to take military possession of the territory, in order to defend it from such innovation; and the consequences must be

upon your own heads, or upon the authority, if any, under which you act. The three gentlemen who were with you, and were taken prisoners by some of our people, have been forwarded on to Frederickton by the magistrates of the country, and will be detained, as all persons heretofore have been, who, on former occasions, were found endeavoring to set up or exercise any foreign jurisdiction or authority in the territory in question. They will, however, be well treated, and every necessary attention paid to their comfort; but I have no doubt they will be detained as prisoners, to be disposed of as may hereafter be directed by the British Government. The warden of the disputed territory, Mr. Maclauchlan, went out, I understood, a few days since, to explain all this to you; but he not having returned, we are led to suppose you have still further violated the laws and treaties of the two nations, by detaining him, who was a mere messenger of communication, together with Mr. Tibbets, the person who was employed to convey him. But as Mr. Maclauchlan was an accredited officer, acknowledged by the American Government, as well as the British, and appointed for the very purpose of looking after this territory, I trust you will, on reflection, see the great impropriety and risk you run, even with your own Government, by detaining him or his attendant, Mr. Tibbets, any longer.

I shall await at this place to receive your answer to this.

I am, sir, your most obedient humble servant,

GEO. FREDERICK STREET,

Solicitor General of the Provinces.

To the OFFICER commanding
the armed force in the disputed territory.

CONFLUENCE OF THE ST. CROIX,

Stream Aroostook river, township No. 10, State of Maine,

February 19, 1839.

SIR: Your communication of the 17th instant has been this moment received. The solicitor general of the provinces must have been misinformed as to the place where the force under my direction is now located, or he would have been spared the impropriety of addressing such a communication to me, a citizen of the State of Maine, one of the North American confederacy of the United States.

It is also to be hoped, for the honor of the British empire, that when Major General Sir John Harvey, Lieutenant Governor and commander-in-chief of the province of New Brunswick, is made acquainted with the place where the Hon. Rufus McIntire, land agent of the State of Maine, and the two other gentlemen with him, were forcibly arrested, by a lawless mob, that he will direct their immediate discharge, and bring the offenders to justice.

The officer to whom you allude, and the person in company with him, were arrested for serving a precept on a citizen of Maine. He was sent on immediately to Augusta, the seat of Government, to be dealt with by the authorities of the State. Their persons are not, therefore, in any power; and application for their discharge must be made to the Government of the State.

If, however, I have been in error as to your being under a mistake as to the place where I am now stationed, on land which was run out into townships by the State of Massachusetts, and covered by grants from that State before Maine was separated from Massachusetts, and which has, therefore, been under the jurisdiction of Maine since she has taken her rank among the independent States of the North American Union; therefore, as a citizen of Maine, in official capacity, I have but one answer to return to the threat conveyed: I am here, under the direction of the Executive of the State, and must remain until otherwise ordered by the only authority recognised by me; and deeply as I should regret a conflict between our respective countries, I shall consider the approach to my station, by an armed force, as an act of hostility, which will be met by me to the best of my ability.

I am, sir, your most obedient servant,

CHARLES JARVIS, *Land Agent.*

To GEO. FRED. STREET, Esq.,

Solicitor Gen. of province of N. Brunswick.

FREDERICKTON, (N. B.) *February 18, 1839.*

Whereas the offence wherewith you stand charged has been pronounced, by the law officers of this province, as one rather against the law of nations and of treaties, than against the municipal laws of this country, and as such must be referred for the decision of her Majesty's Government; you are hereby required to pledge your parole of honor to present yourselves at Frederickton, in this province of New Brunswick, whenever such decision shall be communicated, or you shall be otherwise required by or on the part of this Government; and for this purpose you shall make known the place or places to which such requisitions shall be sent.

J. HARVEY.

HON. RUFUS McINTIRE,
GUSTAVUS G. CUSHMAN,
THOMAS BARTLETT, and
EBENEZER WEBSTER.

FEBRUARY 18, 1838.

We have no hesitation in giving, and hereby do give, the parole of honor above referred to.

Witness:

W. EARL.

To the House of Representatives:

Under the order of the House of Representatives of the 19th instant, I herewith lay before you certain correspondence since had with the Lieutenant Governor of New Brunswick; and the correspondence between George Frederick Street, Esq., solicitor general for the province of New Brunswick, and Charles Jarvis, Esq., provisional land agent of this State.

The reply of Mr. Jarvis to the inadmissible and preposterous claims and pretensions of her Majesty's solicitor general for the province of New Brunswick, must, I think, command the unqualified approbation of every

one having a just regard for the honor of his State. It is in the true spirit. And I have every reason to believe that the same spirit animates the whole body of our citizens. While it prevails, though success will be deserved, defeat can bring no disgrace.

You will see by the accompanying papers, (and I take great pleasure in communicating the fact,) that, Mr. McIntire and his assistants have been released. It was, however, upon their parole of honor to return when thereto required by the Government of that province. Immediately upon the receipt of this information, I advised the release of James Maclauchlan, Esq., provincial land agent, and his assistant, *upon the same terms.*

Since my last communication, the land agent's forces at the Aroostook have been reinforced by about six hundred good and effective men, making the whole force now about seven hundred and fifty.

I have a letter from Mr. Jarvis, dated the 19th, before the reinforcement had arrived, and when his company consisted of only one hundred men. He says he "found the men in good spirits, and that they had been active in making temporary but most effectual defences of logs," &c.

After describing his defences, he says: "by to-morrow noon, a force of one hundred men would make good our position against five hundred. *Retreating, therefore, is out of the question.* We shall make good our stand against any force that we can reasonably expect would be brought against us." He says further, "I take pleasure in saying to you that a finer-looking set of men I never saw than those now with me, and that the honor of our State, so far as they are concerned, is in safe-keeping."

The draught of one thousand men from the third division has been made with great despatch. The troops I understand arrived promptly at the place of rendezvous at the time appointed, in good spirits, and anxious for the order to march to the frontier. The detachment from this second division will be ordered to march at the earliest convenient day—probably on Monday next. Other military movements will be made, which it is unnecessary to communicate to you at this time.

The mission of Colonel Rogers to the Lieutenant Governor of New Brunswick has resulted successfully, so far as relates to the release of the land agent and his assistants, and has been conducted in a manner highly satisfactory.

JOHN FAIRFIELD.

COUNCIL CHAMBER, *February 21, 1839.*

Memorandum.

WASHINGTON, *February 27, 1839.*

Her Majesty's authorities consider it to have been understood and agreed upon by the two Governments that the territory in dispute between Great Britain and the United States, on the Northeastern frontier, should remain exclusively under British jurisdiction until the final settlement of the boundary question.

The United States Government have not understood the above agreement in the same sense; but consider, on the contrary, that there has been no agreement whatever for the exercise, by Great Britain, of exclusive jurisdiction over the disputed territory, or any portion thereof; but a mutual understanding that, pending the negotiation, the jurisdiction then

exercised, by either party, over small portions of the territory in dispute. should not be enlarged, but be continued merely for the preservation of local tranquillity and the public property; both forbearing, as far as practicable, to exert any authority; and when any should be exercised by either, placing upon the conduct of each other the most favorable construction.

A complete understanding upon the question thus placed at issue (of present jurisdiction) can only be arrived at by friendly discussion between the Governments of the United States and Great Britain; and as it is confidently hoped that there will be an early settlement of the general question, this subordinate point of difference can be of but little moment.

In the mean time the Government of the Province of New Brunswick and the Government of the State of Maine will act as follows: Her Majesty's officers will not seek to expel, by military force, the armed party which has been sent by Maine into the district bordering on the Aroostook river; but the Government of Maine will, voluntarily and without needless delay, withdraw, beyond the bounds of the disputed territory, any armed force now within them; and if future necessity shall arise for dispersing notorious trespassers, or protecting public property from depredation, by armed force, the operation shall be conducted by concert, jointly or separately, according to agreement between the Governments of Maine and New Brunswick.

The civil officers in the service, respectively, of New Brunswick and Maine, who have been taken into custody by the opposite parties, shall be released.

Nothing in this memorandum shall be construed to fortify or to weaken, in any respect whatever, the claim of either party to the ultimate possession of the disputed territory.

The minister plenipotentiary of her Britannic Majesty having no specific authority to make any arrangement on this subject, the undersigned can only recommend, as they now earnestly do, to the Governments of New Brunswick and Maine, to regulate their future proceedings according to the terms hereinbefore set forth, until the final settlement of the territorial dispute; or until the Governments of the United States and Great Britain shall come to some definite conclusion on the subordinate point upon which they are now at issue.

JOHN FORSYTH,

Secretary of State of the United States of America.

H. S. FOX,

Her Britannic Majesty's Envoy Extraordinary and

Minister Plenipotentiary.

[To be appended to Document No. 222.]

Mr. Fox to Mr. Forsyth.

WASHINGTON, *February 25, 1839.*

SIR: I have the honor to acknowledge the receipt of your letter of this day's date, written in reply to a communication which I addressed to you on the 23d instant, upon the subject of the dispute that has arisen between the Governments of New Brunswick and Maine.

With reference to that portion of your letter which treats of the question of actual jurisdiction, pending the negotiation for the settlement of the disputed boundary, I deeply regret to find that the Government of the United States is now placed directly at variance with the Government of her Majesty, in its understanding of that question.

I shall lose no time in transmitting your letter to her Majesty's Government, in order that I may be able to convey to you, if necessary, a full knowledge of the views and intentions of Great Britain upon this part of the subject. I confine myself, for the present, to protesting, in the most formal manner, against the views set forth in that part of your letter to which I am referring. I adopt this course, in preference to entering at once into a detailed discussion of the matter, because, in the first place, I shall best be able to do so after a direct communication with my Government; and, in the second place, because I entertain the hope that an early settlement of the general question of the disputed boundary may render this subordinate point of difference of little moment.

I avail myself of this occasion to renew to you the assurance of my high respect and consideration.

H. S. FOX.

The Hon. JOHN FORSYTH,
&c., &c., &c.

Mr. Vaughan to Mr. Clay.—(Extract.)

NOVEMBER 15, 1825.

SIR: I have the honor to lay before you a copy a letter, with its enclosures, which I have received from Sir Howard Douglas, his Britannic Majesty's Lieutenant Governor of New Brunswick.

It appears that two American citizens, representing themselves to be accredited agents of the Commonwealth of Massachusetts and the State of Maine, have circulated a notice amongst the settlers upon the rivers St. John and Madawaska, that they were authorized to execute deeds of conveyance of lands in those districts; and the same persons, on their passage through the settlement of Madawaska, endeavored to induce the men belonging to the militia not to attend the general training; asserting that they could not be fined for their absence, as the territory which they occupied belonged to the United States.

I regret that the difference of opinion which has resulted from the deliberations of the commissioners under the 5th article of the treaty of Ghent, for fixing the boundary between the possessions of his Britannic Majesty and the territory of the United States, has not yet been adjusted; and that an opening is thereby left for complaints of the nature I am now called upon to represent to you. I am sure, however, that you will concur with me in opinion, that, so long as the question of the boundary remains in the present undecided state, it will be the duty of our Governments to control, mutually, any conduct, on the part of their respective subjects, which is calculated to produce disunion and disagreement.

I trust, therefore, that the conduct of the individuals, which I have thought it my duty to bring before you, will meet the disapprobation and discountenance of the Government of the United States.

Mr. Clay to Mr. Vaughan.—(Extract.)

DEPARTMENT OF STATE, *January 18, 1826.*

SIR: In consequence of the letter which you did me the honor to address to me on the 15th of November last, I instituted a correspondence with the Governors of the States of Massachusetts and Maine, to ascertain on what foundation the representations of Sir Howard Douglas rested: I have received letters from them both; but I consider it necessary only to transmit to you a copy of that from the Governor of Massachusetts, under date the 6th day of December, 1825, a copy of mine of the 15th of the same month, (which is the same in substance as one I addressed at the same time to the Governor of Maine,) and a copy of a letter from the Governor of Massachusetts of the 22d day of December.

It appears that the measures adopted by those two States, to which Sir Howard refers, were altogether precautionary, and occasioned by previous acts of asserted authority over the disputed territory; which, if unopposed by countervailing acts, might have been relied on, at some future day, as strengthening the British and weakening the American claim. The cause having been withdrawn, its consequence will no longer exist; and you will accordingly observe that I have, by direction of the President, inculcated a spirit of forbearance and moderation on our side, which we hope will be hereafter practised on yours. Both Governments should derive, from the existence of those mutual complaints, a new motive for guarding, in future, against their recurrence, which can be effectually done only by a settlement of the question of boundary, out of which they arise.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,

Washington, January 18, 1827.

SIR: I have the honor to acknowledge the receipt of your note of the 16th instant, stating, upon the representations of Sir Howard Douglas, his Britannic Majesty's Lieutenant Governor of New Brunswick, that the agents and surveyors of the States of Maine and Massachusetts are

proceeding to lay out townships and open roads in the territory which is mutually claimed by the two Governments of the United States and Great Britain, bordering on that province, and requesting the interposition of the Government of the United States to induce the States of Massachusetts and Maine to abstain from measures which would amount to a premature exercise of authority in the disputed territory.

No information has reached this Department of the acts complained of by Sir Howard Douglas, other than that which is contained in your note. But, as the President's views and wishes remain the same as were communicated to you in the correspondence to which you refer, I shall lose no time, by his directions, in transmitting copies of your note to the Governors of the States of Massachusetts and Maine, and requesting them, respectively, to continue, until the question is settled, to practise that system of forbearance and moderation which it appears to the President to be expedient for both Governments to observe.

I pray you to accept the assurance of my distinguished consideration.

H. CLAY.

RU. HOH. C. R. VAUGHAN, *E. F. and M. P. from G. B.*

Mr. Vaughan to Mr. Clay.

WASHINGTON, January 16, 1827.

SIR: About the latter end of the year 1825, and about the beginning of the last year, a correspondence took place between us relative to encroachments of persons calling themselves agents from the States of Maine and Massachusetts, in the territory in dispute between his Majesty's Government and that of the United States, in consequence of the unsettled state of the northeastern line of boundary under the treaty of Ghent.

The representation which I had then the honor to make was promptly answered by the Government of the United States. An inquiry into the circumstances of the encroachments complained of took place, and a spirit of forbearance and moderation was inculcated, by the directions of the President, which induced me to hope that I should not have occasion to recur again to a representation of a similar nature.

I have received, however, a letter from Sir Howard Douglas, his Majesty's Lieutenant Governor of New Brunswick, acquainting me with some further proceedings of persons calling themselves land agents and surveyors, acting under the authority of the Governments of the States of Maine and Massachusetts, in surveying and laying out townships in the disputed territory in question.

The particular acts which have excited uneasiness in the Government of New Brunswick, are the laying out of land into townships, and marking out roads, within a territory the assignment of which is not yet made to either of the parties to the treaty of Ghent.

My former representation was met by you in so conciliatory a spirit, that I am encouraged to hope that the intervention of the Government of the United States will be effectually exerted to induce the Governments of the States of Maine and Massachusetts to abstain from measures which can be construed into a premature exercise of authority in a disputed territory, and which may lead to collision of a most disagreeable nature between the settlers in that territory.

I think it advisable to make you acquainted, without delay, with the complaint which I have received from the Lieutenant Governor of New Brunswick, whom, I beg leave to assure you, cautiously abstains, on his part, from exercising any authority in the disputed territory which could invite an encroachment as a measure of retaliation.

I have the honor to request that you will accept the assurances of my distinguished consideration.

CHARLES R. VAUGHAN.

The Hon. HENRY CLAY, &c.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,

Washington, September 14, 1827.

SIR: I have the honor to transmit to you, herewith, an extract from a letter, under date the 3d instant, addressed by his excellency Enoch Lincoln, Governor of the State of Maine, to me, to which I invite your particular attention. It is alleged in that extract that, under the authority of the Government of New Brunswick, measures have been adopted, and acts performed, within the territory respectively claimed by the United States and Great Britain, inconsistent with that mutual forbearance which it has been understood, in the correspondence on this subject which has passed between us, would be inculcated and practised on both sides. Assuming the statements of Governor Lincoln to be correct, as I presume they are, a confident reliance is placed in the Government of his Britannic Majesty to cause an immediate correction of the irregular proceedings of which complaint is made.

I request you to accept assurances of my high consideration.

H. CLAY.

Rt. Hon. C. R. VAUGHAN, *E. E. and M. P. from G. B.*

Mr. Vaughan to Mr. Clay.—(Extract.)

WASHINGTON, *September 17, 1827.*

No attempt has ever been made to form new settlements, and the Lieutenant Governor has abstained from exercising any authority over the unoccupied parts of the disputed territory, excepting for the purpose of preserving it in its present state. In proof of the friendly disposition which animates him, the undersigned has the honor to enclose a copy of a letter which Sir Howard Douglas addressed in the month of March last to the magistrates residing in the neighborhood of the disputed territory, and a copy of a letter dated the 13th of April, in which his excellency informs the undersigned that he had directed the attorney general of New Brunswick to prosecute some British subjects who had cut down timber upon the St. John's river.

[ENCLOSURE.]

Copy of a circular to the magistrates in the upper part of the county of York, respecting the disputed territory.

SECRETARY'S OFFICE, *Frederickton, March 9, 1827.*

SIR: Satisfactory assurances having been conveyed to his Majesty's Government of the earnest wish of the Government of the United States to reciprocate the conciliatory disposition shown in regard to the disputed territory at the upper part of the river St. John, it is most desirable, until the question relating thereto shall be finally settled, that no new settlements shall be made, or any timber or other trees felled, in the wilderness part of that territory, nor any act done which may change the state of the question as it existed when the treaty of Ghent was executed.

I am therefore commanded by his excellency the Lieutenant Governor to desire that you will be vigilant, and use your utmost diligence to discover any attempt which may be made by any of his Majesty's subjects to intrude upon that territory with a view to make settlements or to procure timber; and to make immediate representation thereof to his Majesty's attorney general, that legal steps may be taken to punish such intruders and trespassers; and should you discover similar attempts to be made by any other person, whether unauthorized or appearing to act under color of authority, that you will use your best endeavors to ascertain the names of such persons, and report the same to me, with affidavits to establish the facts, for his excellency's consideration.

I have, &c.,

W. F. ODELL.

Mr. Clay to Mr. Vaughan.—(Extract.)

DEPARTMENT OF STATE,

September 16, 1827.

In the mean time, the undersigned owes it in candor to admit that the letters of Sir Howard Douglas, of which copies accompany Mr. Vaughan's note, manifest a just solicitude, on the part of that officer, to prevent and punish any acts on the disputed territory which might lead to the interruption of a good understanding between the two countries in relation to that subject.

Mr. Clay to Mr. Vaughan.—(Extract.)

MARCH 17, 1828.

Whilst the experiment is making for this peaceful settlement of the question, ought either of the parties to assume the exercise of sovereignty or jurisdiction within the contested territory? If he does, can he expect the other party to acquiesce in it, or to look on with indifference? It was a mutual conviction of the irritating consequence which would ensue from the exercise of a separate jurisdiction by either of the parties, that led to the understanding which has so long prevailed between them, to abstain from all acts of exclusive jurisdiction which might have a tendency to produce inquietude. In conformity with that understanding, licenses to cut timber from the disputed territory, granted by the provincial authority,

had been revoked, and the practice of cutting and removing the timber has been understood by the Government of the United States to have been discontinued.

It follows, from the view now presented, that the undersigned cannot subscribe to the opinion that the jurisdiction of the British Government, through its provincial authority, over the disputed territory, has continued with Great Britain, notwithstanding the treaty of 1783. To maintain that opinion, Mr. Vaughan must make out either, first, that the terms of the treaty do exclude, altogether, the disputed territory; or that, if they include it, *actual* possession of the disputed territory was with Great Britain in 1783. Neither proposition can be established.

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Mr. Lawrence to Lord Dudley.—(Extracts.)

LONDON, May 5, 1828.

* * * * *

The motives which have led to these demands may be sufficiently inferred from a consideration of the occurrences already cited. In declaring, through the undersigned, that it cannot consent to the exercise of any separate British jurisdiction, within any part of the State of Maine, as it understands the limits of that State to be defined by the treaty of 1783, prior to the decision of the question of title, the Government of the United States is only protesting against unjustifiable encroachments on its sovereignty, and asking from Great Britain what it is, on its side, willing to accord—that forbearance which the present state of the controversy most strongly inculcates. * * * * *

The undersigned also regards as inadmissible all attempts to defend the exercise of British authority, in the territory referred to, during the time which may intervene before the decision of the arbiter is made, by asserting a title derived from possession. Considering the grounds on which the claims of the United States are founded, it is not perceived how arguments drawn either from first occupancy or immemorial possession can be made to bear on the final determination of the principal subject in discussion between the two countries, or how they can affect the question of temporary jurisdiction. Before the independence of the United States, not only the territory in dispute, but the whole of the adjoining province and State was the property of a common sovereign. At the time of the division of the empire, the United States and Great Britain defined, in express terms, their respective territorial limits; and it will not, it is presumed, be asserted that, on concluding the treaty of 1783, the jurisdiction of the one party over the country allotted to it was less complete than that which was granted to the other over its territory. * * * * *

At all events, the Government of the United States cannot consent to the exercise of any exclusive British authority within the contested territory, founded on the plea of necessity; and, as many of the settlers are intruders on the soil, they can have no right to complain of any disorders among themselves, resulting from their own unauthorized acts of intrusion. * * * * *

I then proceeded to say that I had thought proper to show that, even on the principle assumed by this Government, its claim of exclusive jurisdiction was untenable; but that I totally denied that we held any portion

of the territory embraced within the original States as a "grant" or "cession" from a foreign Power, in the sense which had been attributed to those terms.

Mr. Clay to Mr. Vaughan.—(Extract.)

DEPARTMENT OF STATE,

Washington, January 9, 1829.

SIR: I have this day received a letter from the Governor of the State of Massachusetts, transmitting an extract from a letter addressed by George W. Coffin, Esq., land agent of Massachusetts, to his excellency, a copy of which is herewith communicated, and to which I request your immediate and particular attention.

It appears from this document that "mills are now erecting on the grant formerly made to General Eaton, on the Aroostook river, for the avowed purpose of getting their supply of timber from our forests;" that the proprietor of these mills says "he has assurances from the authorities of New Brunswick that he may cut timber without hindrance from them, provided he will engage to pay them for it if they succeed in obtaining their right to the territory;" that mills are also erected at Fish river, and, to supply them, the growth in that section is fast diminishing; and that the inhabitants on St. John's river obtain from the province of New Brunswick permits to cut on the Crown lands. But it is evident that many having such permits do not confine themselves to Crown lands; for, in my travels across the interior country, logging roads, and the chips where timber had been hewn, were seen in every direction; also many stumps of trees newly cut." I need scarcely remark, that the proceedings thus described are in opposition to the understanding which has existed between the Governments of the United States and Great Britain, that, during the pendency of the arbitration which is to settle the question of boundary, neither party should exercise any jurisdiction, or perform any act on the disputed territory to strengthen his own claims, or to affect the state of the property in issue. The Governor of Massachusetts observes, in his letter to me, that, "in relation to the lands on Fish river, it must be recollected that the survey of a road by the joint commissioners of Massachusetts and Maine, a short time since, was made matter of complaint by the British minister resident at Washington, on the express ground that the territory was within the scope of the dispute. From courtesy to his Government, and a respectful regard to a suggestion from the Department of State, the making of the road was suspended." The Governor justly concludes, "but it will be an ill requital for this voluntary forbearance on our part, if the land is to be plundered of its timber, and the value of the property destroyed before it shall be determined that it does not belong to us."

Mr. Hamilton, acting Secretary of State, to Mr. Vaughan.—(Extract.)

DEPARTMENT OF STATE,

Washington, March 11, 1829.

SIR: I have received and laid before the President of the United States the note, with its enclosures, which you did me the honor to write to me

on the 7th of this month, in answer to a representation which was made to you by Mr. Clay, on the 9th of January last, at the instance of the Governor of Massachusetts, concerning depredations complained of by him against inhabitants of the province of New Brunswick, in cutting timber, preparing lumber for market, and erecting mills, upon the soil of the territory in dispute between the United States and Great Britain; and I am directed by the President to state, in reply, (as I have much pleasure in doing,) that he derives great satisfaction from the information contained in your communication, as he especially perceives, in the prompt and energetic measures adopted by Sir Howard Douglas, Lieutenant Governor of the province in question, and detailed in the enclosures referred to, a pledge of the same disposition on the part of the authorities of that province which animates this Government, to enforce a strict observance of the understanding between the two Governments, that the citizens or subjects of neither shall exercise any acts of ownership in the disputed territory whilst the title to it remains unsettled. I will lose no time in making known to the Governors of Massachusetts and Maine the measures which have been thus adopted by the Lieutenant Governor of New Brunswick, to guard against all depredations upon the disputed territory; and will, at the same time, inform their excellencies of the just and confident expectation entertained by the President that the conciliatory understanding or arrangement between the two Governments of the United States and Great Britain, already referred to, should not be disturbed by the citizens of these two States.

Mr. Livingston to Mr. Bankhead.--(Extract.)

DEPARTMENT OF STATE,

Washington, July 21, 1832.

Until this matter shall be brought to a final conclusion, the necessity of refraining, on both sides, from any exercise of jurisdiction beyond the boundaries now actually possessed, must be apparent, and will no doubt be acquiesced in on the part of his Britannic Majesty's provinces, as it will be by the United States.

Sir Charles Vaughan to Mr. Livingston.--(Extract.)

WASHINGTON, *April 14, 1833.*

The undersigned is directed to assure the American minister, in making these communications, that, if his Majesty's Government shall be enabled, upon receiving satisfactory explanations on the points which have just been mentioned, to acquiesce in the proposition of the Government of the United States, they will enter upon the negotiation which may then be opened, in the most friendly spirit, and with the most sincere desire to arrive at a settlement mutually beneficial to both countries; and he is further to assure Mr. Livingston that his Majesty's Government entirely concur with that of the United States in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction, within the disputed territory, beyond the limits within which it has hitherto been usually exercised by the authorities of either party.

Mr. Van Buren to Mr. Vaughan.—(Extracts.)

DEPARTMENT OF STATE,

Washington, May 11, 1829.

The undersigned indulges the hope that Mr. Vaughan will perceive, in the manner in which the President, discriminating between the rights of this Government and their present exercise, has used the discretion conferred upon him, an additional evidence of the desire which he sincerely entertains, and which he has heretofore caused to be communicated to Mr. Vaughan, that both Governments should, as far as practicable, abstain from all acts of authority over the territory in dispute, which are not of immediate and indispensable necessity, and which would serve to create or increase excitement whilst the matter is in course of arbitration; and he feels well persuaded that Mr. Vaughan will not fail to inculcate the same spirit, and to recommend, in the strongest terms, the observance of the same course on the part of the provincial Government of New Brunswick.

* * * * *

The undersigned cannot acquiesce in the supposition that, because the agent of his Britannic Majesty thought proper, in the proceedings before the commissioners, to lay claim to all that portion of the State of Maine which lies north of a line running westerly from Mars Hill, and designated as the limit or boundary of the British claim, thereby the United States, or the State of Maine, ceased to have jurisdiction in the territory thus claimed. In the view of this Government, his Britannic Majesty's agent might, with equal justice, have extended his claim to any other undisputed part of the State, as to claim the portion of it which he has drawn in question; and, in such case, the Lieutenant Governor of New Brunswick could surely not have considered a continuance on the part of the United States and of the State of Maine to exercise their accustomed jurisdiction and authority to be an encroachment. If so, in what light are we to regard the continued acts of jurisdiction now exercised by him in the Madawaska settlement? More than twenty years ago, large tracts of land lying westward of Mars Hill, and northward on the river Restook, were granted by the State of Massachusetts, which tracts are held and possessed under those grants to this day; and the United States and the States of Massachusetts and Maine, in succession, have never ceased to exercise that jurisdiction which the unsettled condition of the country in that region, and other circumstances, admitted and required.

Mr. Stevenson to Lord Palmerston.—(Extract.)

LONDON, August 10, 1837.

The undersigned, moreover, does not presume that pending the negotiation, and whilst efforts are making for the peaceable and final adjustment of these delicate and exciting questions, her Majesty's Government can claim the right of exclusive jurisdiction and sovereignty over the disputed territory, or the persons residing within its limits. In such a claim of power on the part of Great Britain, or its provincial authorities, the undersigned

need not repeat to Lord Palmerston, (what he is already fully apprized of,) the Government of the United States can never consent to acquiesce, in the existing state of the controversy. On the contrary, the mutual understanding which exists between the two Governments on the subject, and the moderation which both Governments have heretofore manifested, forbid the exercise by either of such high acts of sovereign power as that which has been exerted in the present case by the authorities of her Majesty's provincial Government.

Mr. Stevenson to Lord Palmerston.—(Extract.)

LONDON, November 8, 1837.

By what authority, then, the provincial Government of New Brunswick felt itself justified in exercising such acts of sovereign power, the undersigned is at a loss to conceive—unless, indeed, upon the ground that the jurisdiction and sovereignty over the disputed territory, pending the controversy, rest exclusively with Great Britain. If such should turn out to be the fact, it can hardly be necessary again to repeat the assurances which have been heretofore given, that, in any such claim of power, the Government of the United States cannot acquiesce.

